

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 480

ROBERT MURDOCK, JR., PETITIONER.

COMMONWEALTH OF PENNSYLVANIA (CITY OF JEANNETTE)

No. 481

ANNA PERISICH, PETITIONER.

COMMONWEALTH OF PENNSYLVANIA (CITY OF JEANNETTE)

No. 482

WILLARD L. MOWDER, PETITIONER.

COMMONWEALTH OF PENNSYLVANIA (CITY OF JEANNETTE)

No. 483

CHARLES SEDERS, PETITIONER.

COMMONWEALTH OF PENNSYLVANIA (CITY OF JEANNETTE)

No. 484

ROBERT LAMBORN, PETITIONER.

COMMONWEALTH OF PENNSYLVANIA (CITY OF JEANNETTE)

No. 485

ANTHONY MALTEZOS, PETITIONER.

COMMONWEALTH OF PENNSYLVANIA (CITY OF JEANNETTE)

No. 486

ANASTASIA TZANES, PETITIONER.

COMMONWEALTH OF PENNSYLVANIA (CITY OF JEANNETTE)

No. 487

ELLAINE TZANES, PETITIONER.

COMMONWEALTH OF PENNSYLVANIA (CITY OF JEANNETTE)

ON WRITS OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF
PENNSYLVANIA

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CERTIFIED RECORD

[No. 192]

**IN THE COURT OF QUARTER SESSIONS AND
OYER AND TERMINER
OF WESTMORELAND COUNTY, PA.**

COMMONWEALTH OF PENNSYLVANIA

vs.

Ellaine Tzanes and Anastasia Tzanes

No. 192 February Term, 1940

CHARGE Petition for Appeal

PROSECUTOR City of Jeannette

CORAM O'Connell

FILED Mar. 1, 1940

CERTIFIED FROM THE RECORD

Petition for appeal filed.

May 1, 1940 This appeal, if how, and when allowed will
be nunc pro tunc.

BY THE COURT:

J. Hilary Keenan

Feb. 20, 1942 Appeal Refused.

J. G. GORDON, Jr. P. J.

Court of Com. Pleas.

No. 2, Philadelphia,

Specially presiding.

And now, March 14, 1942, Writs of Certiorari received from Superior Court, as to Ellaine Tzanes and Anastasia Tzanes.

March 16, 1942, Exit records of proceedings, forwarded to the Superior Court.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of said Court at Greensburg, Pa., this 18th day of March, 1942.

JAY W. KROMER

Clerk of Courts.

CERTIFIED RECORD

[No. 193]

IN THE COURT OF QUARTER SESSIONS AND
OYER AND TERMINER
OF WESTMORELAND COUNTY, PA.

COMMONWEALTH OF PENNSYLVANIA

vs.

Anthony Maltezos, Anna Perisich,
Robert Lamborn, Robert Murdock, Jr.,
Charles Seders and Willard L. Mowder

No. 193 February Term, 1940

CHARGE Petition for Appeal

PROSECUTOR City of Jeannette

CORAM O'Connell

FILED Mar. 1, 1940

CERTIFIED FROM THE RECORD

Petition for appeal filed. And Now, Mar. 21, 1940, upon motion of Theodore A. Epstein, Esq., it is ordered and decreed that the order of this Court dated Mar. 1, 1940, in the

above matter is amended to read as follows: A ruling on the petition for the Appeal presented March 1, 1940, to be made upon disposition of the case of Charles H. Stewart, Jr., vs. Commonwealth of Pennsylvania, City of Jeannette, No. 722 October Term, 1939, Supreme Court of the United States, now pending, this proceeding meanwhile to remain in status quo; and such ruling of this Court on the within Petition for Appeal to be dated as of the time of such order.

KEENAN, J.

Feb. 20, 1942 Appeal Refused.

J. G. GORDON, Jr. P. J.
Court of Com. Pleas.
No. 2, Philadelphia,
Specially presiding.

And now, March 12, 1942, Writs of Certiorari received from Superior Court, as to Anthony Meltezos, Robert Lamborn, Charles S. Seders, W. L. Mowder, Anna Perisich and Robert Murdock, Jr.

And now, March 16, 1942, Exit records of proceedings, forwarded to the Superior Court.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of said Court at Greensburg, Pa., this 18th day of March, 1942.

JAY W. KROMER
Clerk of Courts.

PETITION FOR APPEAL**No. 192 1940****IN THE COURT OF QUARTER SESSIONS
OF WESTMORELAND COUNTY, PENNA.****COMMONWEALTH OF PENNSYLVANIA ex rel
City of Jeannette***vs.***ELLAINE TZANES and ANASTASIA TZANES****To the Honorable, the Judges of said court:**

The Petition of the above named defendants, by their counsel Theodore A. Epstein, Esq., respectfully represents:

First: That on February 25, 1940, defendants were arrested without a warrant in the City of Jeannette, County of Westmoreland, Commonwealth of Pennsylvania, by police officers of said city on the charge of violating City Ordinance No. 60 of the City of Jeannette. A certified copy of said ordinance is hereto attached and marked Exhibit "A".

Second: That Section 1 of said ordinance provided a license requirement for "all persons canvassing for or soliciting within said borough, orders for goods . . . or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited". Section 2 further provided for license requirements "for all persons huckstering, peddling, or selling . . . upon the streets", both as more fully set forth in the transcript from the docket of the City of Jeannette.

Third: That on February 26, 1940, defendants came before Mayor John O'Connell of said City of Jeannette, charged with violating said ordinance and were adjudged guilty and sentenced to pay a fine of Fifty (\$50.00) Dollars each plus costs, and in default thereof to be committed to jail for 30 days.

Fourth: That on February 26, 1940, when defendants appeared before Mayor O'Connell as set forth above, defendants first presented their "Motion to Continue" until the case of Stewart vs. City of Jeannette, now pending before the United States Supreme Court, has been decided. That motion being refused, defendants later moved to dismiss the case on the ground of the ordinance's invalidity under the First Amendment to the Constitution of the United States as well as Section 7 of the Constitution of Pennsylvania, in that it restricted freedom of speech, freedom of press, and freedom of worship of Almighty God; also in that the said ordinance violated the Fourteenth Amendment of the Constitution of the United States.

Fifth: That at said hearing, defendants set forth substantially the following facts before Mayor O'Connell, to-wit, that they were going from house to house exhibiting literature explaining the Bible and offering to play, on a portable phonograph, a short Bible lecture entitled "Snare and Racket", copy of which is attached hereto and marked Exhibit "B", and were so engaged when arrested; and they did not apply for a permit to do this work because they were thus engaged in preaching the gospel of Christ Jesus in obedience to the commandments of Almighty God, whose law is supreme, and to ask for a permit to do this work would be an insult to Almighty God, and result in their destruction.

Sixth: That at said hearing before Mayor O'Connell, defendants did further move to dismiss the case for insufficient evidence of guilt, tendering to Mayor O'Connell a printed copy of the case of Schneider vs. The State (Town of Irvington); hereinafter referred to, but said motion was nevertheless refused. This action on the part of the Mayor constituted a wanton disregard of the law, under both the above case and the decision of this Court in Com. vs. Klasik, No. 210 February 1939, decided January 9, 1940; copy of opinion therein attached hereto and marked Exhibit "C".

Seventh: That the finding of said Mayor O'Connell was

arbitrary and capricious in that the testimony produced before him neither proved nor tended to prove that defendants were guilty of a violation of said ordinance, and his said finding in convicting defendants was therefore an abuse of judicial discretion.

Eighth: That defendants aver that they were, at the time when arrested, engaged in the work of preaching the gospel of Christ Jesus, which work was done in obedience to the commandments of Almighty God as set forth in the Bible especially in Isaiah 43: 10-12, Isaiah 61: 1, 2, 1 Peter 2: 21, Matthew 24: 14, and Matthew 10: 7, 12-14, Acts 20: 20, and that they were in no way soliciting orders for goods or merchandise, nor were they acting as hucksters, peddlers, or salesmen of merchandise, nor were any other designation as set forth in said ordinance. Defendants further aver that the work they were then engaged upon was in no sense commercial or for self-gain, but was on the contrary entirely unselfish and in the spirit of bringing God's Word to others.

Ninth: That defendants were denied their right freely to worship Almighty God according to the dictates of their consciences, their right to freedom of speech, freedom of press, and freedom of assembly, all in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

Tenth: That defendants further aver that said City Ordinance No. 60 is unconstitutional under the decisions of the Supreme Court of the United States, to wit, *Lovell vs. City of Griffin*, 303 U. S. 444, and *Schneider vs. The State (Town of Irvington, N. J.)* 308 U. S. 147. The decision of the Mayor in Jeannette in the instant case is clearly in conflict with the *Schneider* case, *supra*, in that Mr. Justice Roberts, delivering the opinion of the Court, stated "To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees". A copy of the United States Supreme Court in the *Schneider* case,

Petition for Appeal (for No. 192)

7a

supra, is hereto attached and marked Exhibit "D".

Wherefore defendants pray that an appeal be allowed so that justice may be done.

THEODORE A. EPSTEIN
Attorney for Defendants

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF WESTMORELAND } ss.

Before me, the undersigned authority, in and for the said County and State, personally appeared ANASTASIA TZANES, who, being duly sworn according to law, deposes and says that the averments contained in the foregoing Petition for Appeal are true and correct to the best of her knowledge and belief.

ANASTASIA TZANES

Sworn to and subscribed
before me this 1 day
of March, 1940.

W. E. NOEL

ORDINANCE NO. 60

["Exhibit A"]

AN ORDINANCE regulating the canvassing for or soliciting of orders for goods, paintings, pictures, wares or merchandise of any kind within the Borough of Jeannette, and the delivery of such articles under orders so obtained or solicited and requiring all person or persons so engaged in canvassing, soliciting or delivering, to first procure from the Burgess a license to transact said business and also regulating the hawking, vending of fruits and other merchandise upon the streets by public outcry or by solicitation and requiring all person or persons thus engaged to first obtain a license from the Burgess.

Be it ordained and enacted by the Borough of Jeannette in Council assembled and it is hereby ordained and enacted by the authority of the same.

SECTION 1. That all persons canvassing for or soliciting within said Borough, orders for goods, paintings, pictures, wares, or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefore the following sums according to the time for which said license shall be granted.

For one day \$1.50 for one week seven dollars (\$7.00) for two weeks twelve dollars (\$12.00) for three weeks, twenty dollars (\$20.00) provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.

SECTION 2. That all persons hawking, peddling or selling fruits goods or other merchandise upon the streets of said Borough by outcry or solicitation of the people upon the streets or thorough-fares of said Borough shall be required to procure from the Burgess a license to transact

said business and shall pay to the Treasurer of said Borough therefore the sum of ten dollars (\$10.00) per-day. Any person or persons failing to obtain a license as required by this ordinance shall upon conviction before the Burgess or Justice of the Peace of said Borough forfeit and pay a fine not exceeding one hundred dollars (\$100.00) nor less than the amount required for the license for such person or persons together with costs of suit, and in default of payment thereof, the defendant or defendants may be sentenced and committed to the Borough lock-up for a period not exceeding five (5) days or to the County Jail for a period not exceeding thirty (30) days.

Adopted by the Town Council of the Borough of Jeannette this 21st. day of March A.D. 1898.

Attest:

Geo. S. Kirk
Secretary

D. E. Carle
President of Council

I, J. Claire Manson, City Clerk, hereby certify that the above is a true and correct copy of Ordinance No. 60 of the City of Jeannette (formerly the Borough of Jeannette.)

J. Claire Manson (signed)
City Clerk.

Exhibits B, C, and D referred to in foregoing Petition for Appeal are not printed here because they appear at other parts of the Record. R. 60a-62a, 108a, Index NOTE, p. i.

MAYOR'S TRANSCRIPT

[No. 192 February Term 1940]

The transcript of the Mayor's Court in the above entitled cause, which accompanies the Petition for Appeal, is as follows:

INFORMATION**COMMONWEALTH OF PENNSYLVANIA***vs.*

Elaine Tzanes

Anastasia Tzanes

COMMONWEALTH OF PENNSYLVANIA**COUNTY OF WESTMORELAND**

ss.:

Before me, the subscriber, a Justice of the Peace, in and for the COUNTY of WESTMORELAND, personally came Othmer Seiler who, upon oath duly administered according to law, deposes and says that at Jeannette in the COUNTY of WESTMORELAND on or about the 25 day of February A.D. 1940, Defendant aforesaid did then and there unlawfully solicit sales of books and pamphlets, and did sell and deliver the same from door to door in the City of Jeannette, without a license, all of which is contrary to an Ordinance No. 60 Sec. 1 in such cases made and provided. Complainant therefor prays and desires that a warrant may issue, and that the Defendant may be arrested and held to answer this charge of unlawful solicitation and further deponent saith not.

OTHMER SEILER

Sworn to and subscribed before me,
this 25th day of February, A.D. 1940.

JOHN M. O'CONNELL

Mayor [SEAL]

My Commission Expires Jan. 1, 1942.

TRANSCRIPT OF DOCKET

COMMONWEALTH OF PENNSYLVANIA

vs.

Elaine Tzanes and Anastasia Tzanes

Charge: Soliciting and selling merchandise without a license. Warrant issued to Othmer Seiler February 25th A.D. 1940 on oath of Othmer Seiler

And now February 25th A.D. 1940, Defendants arrested by virtue of above recited warrant, and bail required for a hearing on the 26th day of February 1940 at 7 o'clock P.M., in the sum of \$100.00.

And now February 26th 1940, at 7 o'clock P.M., the time fixed for a hearing, a hearing is had in above stated case, the Defendants appearing.

On the part of the Commonwealth, the following witnesses were produced, sworn and examined, viz:—(See Notes attached) whereupon, it appearing to me, the said Justice of the Peace, that a prima facie case has been made out, the said Defendant . . . held to the next Term of the Court of Quarter Sessions and Oyer and Terminer, and bail required for appearance thereat in the sum of \$

Commonwealth of Pennsylvania, }
County of Westmoreland } ss.:

I hereby certify that the foregoing is a true and correct transcript from my Docket, and that the recognizances attached to the return in this case were duly taken and acknowledged before me.

JOHN M. O'CONNELL
Mayor [SEAL]

My Commission Expires Jan. 1st 1942.

After inspection and examination of the foregoing Transcript by Theodore A. Epstein, attorney for the defendants, and Charles R. Hessler, who, not an attorney, represented said defendants at the hearing, the transcript is amended by making the following additions:

The said Charles R. Hessler, before any testimony was taken, made a motion to continue said hearing until a petition to the Supreme Court of the United States for a writ of certiorari in the case of *City of Jeannette, Commonwealth v. Pennsylvania v. Charles H. Stewart, Jr.*, at No 722 October Term, 1939, was disposed of.

The Mayor, observing that he had requested the said Charles R. Hessler to keep his followers out of the City of Jeannette until said case was disposed of, and that he had refused to do so, denied the motion.

The said Charles R. Hessler, in calling Willard Mowder, Charles Seders, Robert Murdock, Jr. and Robert Lamborn, defendants in companion cases, and the witness, Earl B. Singer, stated that said persons were being called on behalf of the defendant, Elaine Tzanes, and the defendant, Anastasia Tzanes. The substance of the testimony of said persons is as follows:

The defendants, Willard Mowder and Charles Seders, testified that they were ordained Ministers, and that their method of preaching was to go about from door to door distributing tracts and pamphlets. They said they obtained the books from a supply house of the Watch Tower Bible & Tract Society by making a contribution of 25 cents for each of the books "Salvation" and "Creation", and that they parted with them by exacting a contribution in the same amount. They said that on occasions they had given some of the books without requiring a contribution where the person was too poor to pay. They said further if they were

unable to pay the supply house the contribution in cash at the time they obtained the books, they could be charged with them and could pay later.

The defendants, Robert Murdock, Jr. and Robert Lamborn, testified that they were ordained Ministers and preached the Gospel by going about from door to door distributing books, tracts and pamphlets, and that they received contributions so that more books and tracts could be published. Lamborn testified that he obtained the books from the Cadiz, Ohio Supply Company of Jehovah's Witnesses by making a contribution of twenty cents, and that he sold them or required a contribution of twenty-five cents before parting with them. Murdock testified that he obtained the books from the supply house at Ambridge, Pennsylvania, for a twenty cent contribution and received a twenty-five cent contribution from persons who took the books.

Earl B. Singer testified on behalf of the defendants that he, too, was an ordained Minister; that it was the practice of Jehovah's Witnesses to spread the faith by distributing books and tracts from door to door; that the Publishing house in Brooklyn, New York, of the Watch Tower Bible & Tract Society allotted territory in the various communities in which the various ministers were to give meat and drink to those who thirsted and hungered for the true word. For a true member of the faith to obtain a license to engage in this work, he said would result in the eternal damnation of this individual. On cross-examination, he testified that he had a trucking business in East Liverpool, Ohio, but that for the past fifteen months he had left the management of the business to others and was devoting his whole time to spreading the word of God. Being a full time devotee, he said he was allowed a special arrangement with the publishing house and obtained such books as "Creation" and "Salvation" by contributing five cents each and in disposing of them, he exacted a twenty-five cent contribution. He de-

nied that he personally profited in any way, but said he needed the four hundred per cent. difference between the contribution he made to obtain the books and the contribution he obtained in disposing of them to take care of expenses.

A phonograph record entitled "Snare and Racket", the testimony cards of the defendants, and books purchased by witnesses for the City of Jeannette, Commonwealth of Pennsylvania, were offered in evidence and made a part of the record.

March 28th, 1940, at the request of the defendants, the typewritten notes of testimony taken at the hearing February 26th, 1940 are made a part of the record, and consent is given to the filing of the same in connection with the transcript.

Othmer Seiler, who testified, in substance, that he is a Police Officer of the City of Jeannette; that on the 25th day of February, 1940, he was at his home at No. 50 Cuyler Avenue, Jeannette, when the two defendants came to his house, and after being admitted to the house asked him to purchase a book called "Creation," stating that the price was 25 cents. They also offered, for the sum of 25 cents, to sell him a Bible which they stated was worth in excess of Three Dollars. After further conversation, he purchased the book and paid the sum of 25 cents. The book was handed to him by the defendant, Anastasia Tzanes, and the money was given by him to the defendant, Elaine Tzanes. The defendants had other books in a case in their possession. The witness testified he then advised the defendants he was a police officer, and placed them under arrest. Upon arriving at the Police Station, he ascertained that the defendants did not have a license.

Neither of the defendants testified, but made a motion to dismiss the complaint on the ground that the evidence was not sufficient to sustain the charge, and that the ordinance of the City of Jeannette was invalid because it vio-

lated the Constitution of the State of Pennsylvania and the Constitution of the United States. The motion was denied.

At the conclusion of the hearing, the defendants were adjudged guilty and a fine of Fifty (\$50.00) Dollars each imposed, and in default of payment thereof, were sentenced to a period of thirty days in the County Jail of Westmoreland County. The defendants each gave bail in the sum of \$100 for his appearance in the event and appeal to the Quarter Sessions Court was refused.

[Filed Mar. 26, 1940, Wm. M. Berlin, Clerk]

["Defendants' Recognizance" and "Justification of Surety" following here omitted in printing]

PETITION FOR APPEAL**No. 193 1940****IN THE COURT OF QUARTER SESSIONS
OF WESTMORELAND COUNTY, PENNA.****COMMONWEALTH OF PENNSYLVANIA ex rel
City of Jeannette***vs.***ANTHONY MALTEZOS
ANNA PERISICH
ROBERT LAMBORN
ROBERT MURDOCK, JR.
CHARLES SEDERS
WILLARD L. MOWDER****To the Honorable, the Judges of said court:**

The Petition of the above named defendants, by their counsel Theodore A. Epstein, Esq., respectfully represents:

First: That on February 25, 1940, defendants were arrested without a warrant, in the City of Jeannette, County of Westmoreland, Commonwealth of Pennsylvania, by police officers of said city on the charge of violating City Ordinance No. 60 of the City of Jeannette. A certified copy of said ordinance is hereto attached and marked Exhibit "A".

Second: That Section 1 of said ordinance provided a license requirement for "all persons canvassing for or soliciting within said borough; orders for goods . . . or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited". Section 2 further provided for license requirements "for all persons huckstering, peddling, or selling . . . upon the streets", both as more fully set forth in the transcript from the docket of the City of Jeannette.

Third: That on February 26, 1940, defendants came before Mayor John O'Connell of said City of Jeannette, charged with violating said ordinance and were adjudged guilty and sentenced to pay a fine of Fifty (\$50.00) Dollars each plus costs, and in default thereof to be committed to jail for 30 days.

Fourth: That on February 26, 1940, when defendants appeared before Mayor O'Connell as set forth above, defendants first presented their "Motion to Continue" until the case of Stewart vs. City of Jeannette now pending before the United States Supreme Court, has been decided. That motion being refused, defendants later moved to dismiss the case on the ground of the ordinance's invalidity under the First Amendment to the Constitution of the United States as well as Section 7 of the Constitution of Pennsylvania, in that it restricted freedom of speech, freedom of press, and freedom of worship of Almighty God; also in that the said ordinance violated the Fourteenth Amendment of the Constitution of the United States.

Fifth: That at said hearing, defendants set forth substantially the following facts before Mayor O'Connell, to wit, that they were going from house to house exhibiting literature explaining the Bible and offering to play, on a portable phonograph, a short Bible lecture entitled "Snare and Racket", copy of which is attached hereto and marked Exhibit "B", and were so engaged when arrested; and they did not apply for a permit to do this work because they were thus engaged in preaching the gospel of Christ Jesus in obedience to the commandments of Almighty God, whose law is supreme, and to ask for a permit to do this work would be an insult to Almighty God, and result in their destruction.

Sixth: That at said hearing before Mayor O'Connell, defendants did further move to dismiss the case for insufficient evidence of guilt, tendering to Mayor O'Connell a printed copy of the case of Schneider vs. The State (Town of Irvington), hereinafter referred to, but said motion was nevertheless refused. This action on the part of the Mayor

constituted a wanton disregard of the law, under both the above case and the decision of this Court in *Com. vs. Klasik*, No. 210 February 1939, decided January 9, 1940, copy of opinion therein attached hereto and marked Exhibit "C".

Seventh: That the finding of said Mayor O'Connell was arbitrary and capricious in that the testimony produced before him neither proved nor tended to prove that defendants were guilty of a violation of said ordinance, and his said finding in convicting defendants was therefore an abuse of judicial discretion.

Eighth: That defendants aver that they were, at the time when arrested, engaged in the work of preaching the gospel of Christ Jesus, which work was done in obedience to the commandments of Almighty God as set forth in the Bible especially in Isaiah 43: 10-12, Isaiah 61: 1, 2, 1 Peter 2: 21, Matthew 24: 14, and Matthew 10: 12-14, Acts 20: 20, and that they were in no way soliciting orders for goods or merchandise, nor were they acting as hucksters, peddlers, or salesmen of merchandise, nor were any other designation as set forth in said ordinance. Defendants further aver that the work they were then engaged upon was in no sense commercial or for self-gain, but was on the contrary entirely unselfish and in the spirit of bringing God's Word to others.

Ninth: That defendants were denied their right freely to worship Almighty God according to the dictates of their consciences, their right to freedom of speech, freedom of press, and freedom of assembly, all in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

Tenth: That defendants further aver that said City Ordinance No. 60 is unconstitutional under the decisions of the Supreme Court of the United States, to wit, *Lovell vs. City of Griffin*, 303 U. S. 444, and *Schneider vs. The State (Town of Irvington, N. J.)* 308 U. S. 147. The decision of the Mayor in *Jeannette* in the instant case is clearly in conflict with the *Schneider* case, *supra*, in that Mr. Justice

Roberts, delivering the opinion of the Court, stated "To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees". A copy of the opinion of the United States Supreme Court in the Schneider case, supra, is hereto attached and marked Exhibit "D".

Wherefore defendants pray that an appeal be allowed so that justice may be done.

THEODORE A. EPSTEIN
Attorney for Defendants

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF WESTMORELAND) ss.:

Before me, the undersigned authority, in and for the said county and state, personally appeared CHARLES SEDERS, who, being duly sworn according to law, deposes and says that the averments contained in the foregoing Petition for Appeal are true and correct to the best of his knowledge and belief.

CHARLES SEDERS

Sworn to and subscribed before me this 1 day of March, 1940:
W. E. NOEL Notary Public

This appeal, if, how and when allowed will be nunc pro tune.
By order of Court KEENAN

Edward A. Compona, Clerk
Bond to be continued

ORDINANCE NO. 60

["Exhibit A"]

AN ORDINANCE regulating the canvassing for or soliciting of orders for goods, paintings, pictures, wares or merchandise of any kind within the Borough Jeannette, and the delivery of such articles under orders so obtained or solicited and requiring all person or persons so engaged in canvassing, soliciting or delivering, to first procure from the Burgess a license to transact said business and also regulating the hawking, vending of fruits and other merchandise upon the streets by public outcry or by solicitation and requiring all person or persons thus engaged to first obtain a license from the Burgess.

Be it ordained and enacted by the Borough of Jeannette in Council assembled and it is hereby ordained and enacted by the authority of the same.

SECTION 1. That all persons canvassing for or soliciting within said Borough, orders for goods, paintings, pictures, wares, or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited; shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefore the following sums according to the time for which said license shall be granted:

For one day \$1.50 for one week seven dollars (\$7.00) for two weeks twelve dollars (\$12.00) for three weeks, twenty dollars (\$20.00) provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.

SECTION 2. That all persons huckstering, peddling or selling fruits goods or other merchandise upon the streets of said Borough by outcry or solicitation of the people upon the streets or thorough-fares of said Borough shall be required to procure from the Burgess a license to transact

said business and shall pay to the Treasurer of said Borough therefore the sum of ten dollars (\$10.00) per day. Any person or persons failing to obtain a license as required by this ordinance shall upon conviction before the Burgess or Justice of the Peace of said Borough forfeit and pay a fine not exceeding one hundred dollars (\$100.00) nor less than the amount required for the license for such person or persons together with costs of suit, and in default of payment thereof, the defendant or defendants may be sentenced and committed to the Borough lock-up for a period not exceeding five (5) days or to the County Jail for a period not exceeding thirty (30) days.

Adopted by the Town Council of the Borough of Jeannette this 21st. day of March A.D. 1898.

Attest:

Geo. S. Kirk
Secretary

D. E. Carle
President of Council

I, J. Claire Manson, City Clerk, hereby certify that the above is a true and correct copy of Ordinance No. 60 of the City of Jeannette (formerly the Borough of Jeannette.)

J. Claire Manson (signed)
City Clerk.

Exhibits B, C, and D referred to in foregoing Petition for Appeal are not printed here because they appear at other parts of the Record. R. 60a-62a, 108a, Index NOTE, p. i.

MAYOR'S TRANSCRIPT

[No. 193 February Term 1940]

The transcript of the Mayor's Court in the above entitled cause, which accompanies the Petition for Appeal, is as follows:

INFORMATION**COMMONWEALTH OF PENNSYLVANIA**

vs.

Annie Perisech, Anthony Maltezon,
Willard Mowder, Charles Seders,
Robert Lamborn, Robert Murdock, Jr.

COMMONWEALTH OF PENNSYLVANIA } ss.
COUNTY OF WESTMORELAND

Before me, the subscriber, a Justice of the Peace, in and for the COUNTY of WESTMORELAND, personally came Francis Kramer who, upon oath duly administered according to law, deposes and says that at Jeannette in the County of Westmoreland on or about the 25 day of February A.D. 1940, Defendant aforesaid did then and there unlawfully solicit sales of books and pamphlets, and did sell and deliver the same from door to door in the City of Jeannette, without a license.

All of which is contrary to an Ordinance No. 60 Sec. 1 in such cases made and provided. Complainant therefor prays and desires that a warrant may issue, and that the Defendant may be arrested and held to answer this charge of Violating Soliciting Ordinance and further deponent saith not.

FRANCIS KRAMER

Sworn to and subscribed before me, this 25th day of February, A.D. 1940. JOHN M. O'CONNELL, Mayor [SEAL]
My Commission Expires Jan. 1, 1942.

TRANSCRIPT OF DOCKET

Charge: Soliciting and selling merchandise without a license. Warrant issued to Francis Kramer February 25th, A.D. 1940, on oath of

And now February 25th A.D. 1940, Defendant arrested by virtue of above recited warrant, and bail required for a hearing on the 26th day of February, 1940 at 7 o'clock P.M., in the sum of \$300.00.

See notes attached.

I hereby certify that the foregoing is a true and correct transcript from my Docket, and that the recognizances attached to the return in this case were duly taken and acknowledged before me.

JOHN M. O'CONNELL

Mayor [SEAL]

My Commission Expires Jan. 1st 1942.

After inspection of the foregoing Transcript by Theodore A. Epstein, Attorney for the defendants, and Charles R. Hessler, who, though not an Attorney, was present and permitted to represent the defendants at said hearing, the following additions to said transcript are made:

Before any testimony was taken, the said Charles R. Hessler made a motion to have said cases continued until the Supreme Court in the United States disposed of a petition for writ of certiorari in the case of City of Jeannette, Commonwealth of Pennsylvania, v. Charles H. Stewart, Jr., at No. 722 October Term, 1939.

The Mayor, noting that he had requested the defendants to remain out of Jeannette pending the disposition of said case, and that they had refused to do so, denied the motion.

The said Charles R. Hessler, at the time the defendants, Willard Mowder, Charles Seders, Robert Murdock, Jr. and Robert Lamborn, were called stated they were being called as witnesses on behalf of themselves and the other defend-

ants as well, and that the witness, Earl B. Singer, was called on behalf of all the defendants.

A phonograph record entitled "Snare and Racket", the testimony cards of the defendants, and the books purchased by witnesses for the City of Jeannette were offered in evidence and made a part of the record.

March 28th, 1940, at the request of the defendants, the typewritten notes of testimony taken at the hearing February 26th, 1940, are made a part of the record, and consent is given to the filing of the same in connection with the transcript.

Francis Kramer testified, in substance, that he is a Police Officer in the City of Jeannette; that he received a call and went to the home of Regis Detruf, and was advised that the defendants, Willard Mowder and Charles Seders, had sold a book there, and that he later arrested these two defendants as they were in the act of entering another house in the vicinity; that they had in their possession a quantity of books and tracts, and admitted to him they did not have a license to sell.

Regis Detruf said, in substance, that the two defendants had knocked on the door of his home; that they were told by his brother that he was not interested in any books, and that they closed the door and left; that he, Regis Detruf, went out of the house and saw them on the porch of the adjoining house and asked them what books they were selling and the price. One of the defendants advised him the price was 25 cents. He agreed to purchase the book "Salvation", and paid the defendants the sum of 25 cents; the defendants had a number of books and a victrola in their possession.

The Witness, Francis Kramer, testified that while on duty he received a complaint from Virginia Clair, and in response, went to Seventh Street, in the City of Jeannette; and accompanied by Herbert Baughman, found the defendants, Robert Murdock, Jr. and Robert Lamborn, on the porch of a home near the Clair residence; that the defendants, Lamborn and Murdock, admitted to him that they had no

license to solicit, and he placed them under arrest.

Herbert Baughman, Virginia Clair, Katherine Clair and Lillian Clair testified they were at the Clair home when the defendants, Murdock and Lamborn, came to the door and asked to be admitted, and played a record on the Victrola. After the record was played, the defendants solicited them to purchase books, and after some conversation, the witness, Virginia Clair, was told that the price was 25 cents. She paid the same and received the book "Salvation."

Francis Kramer further testified that he was at his home, off duty, late in the afternoon of February 25th, 1940, when the two defendants, Annie Perisich and Anthony Maltazon, knocked on the door of his home, and after being admitted, played a Victrola record, and solicited him to buy books. He inquired the price, and was told they were 25 cents each. He purchased the book "Salvation", and paid the sum of 25 cents. The defendants tried to persuade him to purchase a bible for the sum of 25 cents, claiming it was worth more than \$3.00. He then told the defendants he was a Police Officer, and placed them under arrest, and was informed by the defendants that they did not have a license.

The defendants, Willard Mowder and Charles Seders testified that they were ordained ministers, and that their method of preaching was to go about from door to door Distributing tracts and pamphlets. They said they obtained the books from a supply house of the Watch Tower Bible & Tract Society by making a contribution of 25 cents for each of the books "Salvation" and "Creation", and that they parted with them by exacting a contribution in the same amount. They said that on occasions they had given some of the books without requiring a contribution where the person was too poor to pay. They said further if they were unable to pay the supply house the contribution in cash at the time they obtained the books, they could be charged with them and could pay later.

The defendants, Robert Murdock, Jr. and Robert Lamborn testified that they were ordained Ministers and

preached the Gospel by going about from door to door distributing books, tracts and pamphlets, and that they received contributions so that more books and tracts could be published. Lamborn testified that he obtained the books from the Cadiz, Ohio Supply Company of Jehovah's Witnesses by making a contribution of twenty cents, and that he sold them or required a contribution of twenty-five cents before parting with them. Murdock testified that he obtained the books from the supply house at Ambridge, Pennsylvania, for a twenty cent contribution and received a twenty-five cent contribution from persons who took the books.

Earl B. Singer testified on behalf of all the defendants that he, too, was an ordained Minister; that it was the practice of Jehovah's witnesses to spread the faith by distributing books and tracts from door to door; that the Publishing House in Brooklyn, New York, of the Watch Tower Bible & Tract Society allotted territory in the various communities in which the various ministers were to give meat and drink to those who thirsted and hungered for true word. For a true member of the faith to obtain a license to engage in this work, he said would result in the eternal damnation of this individual. On cross-examination, he testified that he had a trucking business in East Liverpool, Ohio, but that for the past fifteen months he had left the management of the business to others and was devoting his whole time to spreading the word of God. Being a full time devotee, he said he was allowed a special arrangement with the publishing house and obtained such books as "Creation" and "Salvation" by contributing five cents each and in disposing of them, he exacted a twenty-five cent contribution. He denied that he personally profited in any way, but said he needed the four hundred per cent difference between the contribution he made to obtain the books and the contribution he obtained in disposing of them to take care of expenses.

None of the defendants who testified denied that the transactions had taken place as detailed by the witnesses

called on behalf of the Commonwealth except Charles Lamborn said that he had told Virginia Clair about the time she was paying the money that the money was to be used so that other books could be distributed.

The defendants, Annie Peresich and Anthony Maltezon did not testify.

At the conclusion of the testimony, a motion was made to dismiss the defendants on the grounds that the testimony was insufficient to support a conviction, and on the further ground that Ordinance No. 60 of the City of Jeannette violated the Constitutions of Pennsylvania and of the United States. The motion was denied.

At the conclusion of the hearing, the defendants were adjudged guilty, and a fine of \$50.00 each was imposed, and in default of payment thereof were sentenced to a period of thirty days in the County Jail of Westmoreland County. The defendants each gave bail in the sum of \$100 for his appearance in the event an appeal to the Quarter Sessions Court was refused.

["Defendants' Recognizance" and "Justification of Surety" following here omitted in printing]

TRANSCRIPT OF EVIDENCE

The transcript of the evidence referred to by the Mayor in the foregoing "Mayor's Transcripts" (2) attached to the two Petitions for Appeal and made, respectively, a part of the Mayor's Transcript and the Petition for Appeal, is as follows:

**IN THE MAYOR'S COURT OF
THE CITY OF JEANNETTE,
COUNTY OF WESTMORELAND
STATE OF PENNSYLVANIA**

CITY OF JEANNETTE, Complainant,

vs.

**ANTHONY MALTEZOS, ANNA PERISICH,
ROBERT LAMBORN, ROBERT MURDOCK, JR.,
CHARLES SEDERS and WILLARD L. MOWDER,
Defendants.**

CITY OF JEANNETTE, Complainant,

vs.

**ELLAINE TZANES and ANASTASIA TZANES,
Defendants.**

**HEARING held Monday, February 26th, 1940, at 7:00 P.M.,
in the Municipal Building, Jeannette, Pennsylvania.
CORAM: Hon. John M. O'Connell, Mayor of the City of
Jeannette, Pennsylvania.**

APPEARANCES

For the Commonwealth:

**Fred B. Trescher, Esq.,
City Solicitor**

For the Defendants:

Mr. Charles R. Hessler

**TRANSCRIPT
OF STENOGRAPHIC NOTES OF TESTIMONY**

Reported by: James Shaughnessy,
Official Reporter,
County Court,
Pittsburgh, Penna.

THE COURT: All right. I will call the case of Commonwealth vs. Anthony Maltezos, Anna Perisich, Robert Lamborn, Robert Murdock, Jr., Charles Seders, Willard L. Mowder, Ellaine Tzanes and Anastasia Tzanes, charged with unlawfully soliciting sales of books and pamphlets and selling the same from door to-door in the City of Jeannette without a license. How do you plead?

MR. HESSLER: Not guilty.

THE COURT: Do you all plead not guilty?

MR. HESSLER: Not guilty. Are you going to try all six at once?

THE COURT: Yes; we will try them all together. It is all the same.

COMMONWEALTH'S CASE

FRANCIS KRAMER, a witness called and produced on behalf of the Commonwealth, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q What is your full name, please?

A Francis Kramer.

Q And your occupation, Mr. Kramer?

A Night lieutenant of police, Jeannette.

Q Were you on duty on February 25th?

A Yes, I was.

Q Did you have some complaint with reference to Charles Seders?

A Yes, I did.

Q Will you state what that was and what you did pursuant to that complaint?

A Well, I had a call from Detruf over here (indicating) about these parties up here selling books, and he asked me what I was going to do about it. I asked him, I says, "Did you buy a book from them?" He said yes. I says "Can you point the fellows out to me?" He said yes. I said, "We will be up right away." So I went up to his house and he was standing on the front porch—

Q Who was standing on the front porch?

A Detruf here, and he says, "The fellow is up around the corner," I says, "You come along with me and point him out." So we went up to the corner in my car, and he says, "Right over there they are." So—

Q Whom did he point out?

A He pointed out this here Charles Seders and Willard Mowder.

Q Can you identify those two persons now?

A Yes, I think that is this party here and this party here (indicating Charles Seders and Willard Mowder).

Q Did you have any conversation with these two men?

A Well, the only thing is, the conversation we had is they said they didn't do anything.

Q Did they have any books or pamphlets with them?

A Yes, they had a satchel and one of these victrolas.

Q Did they have anything else, any pamphlets or books of any kind?

A Well, they had them in a suitcase. I didn't go into their suitcase.

Q You didn't examine the suitcase?

A No.

Q Did you ask them whether they had been selling—

A Yes, I asked them if they were selling. They claimed they weren't selling, they were giving the books away.

Q Did you ask them whether they had a license?

A Yes, I did.

Q What did they say about that?

A They said they didn't have no permit or anything.

Q They didn't?

A No.

CROSS EXAMINATION

Mr. Hessler:

Q Officer Kramer, did you see Mr. Seders sell any books?

A No.

Q Did you see Mr. Mowder sell any books?

A No.

REGIS DETRUF, a witness called and produced on behalf of the Commonwealth, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q What is your full name?

A Regis Detruf.

Q Where do you live, Mr. Detruf?

A 718 St. Clair Street.

Q Were you home on the 25th of February?

A Yes, sir.

Q Did you see the defendants, Charles Seders and Willard Mowder there?

A Yes, sir.

Q What time of the day did they come to your place?

A I really couldn't say.

Q Was it in the morning or afternoon?

A It was in the afternoon.

Q Can you identify Mr. Seders and Mr. Mowder now?

A Yes, sir.

Q Are they the two persons that Mr. Kramer pointed out?

A Yes, sir.

Q Did they come to your home?

A Yes, sir.

Q What did they want?

A Well, they said they were,—they came to the door and my brother answered the door and said we weren't interested. They left and I went out on the porch and I hollered to that fellow right there (indicating Charles Seders), and I said, "How much are your books?" and he said 25c. I said, "May I see one?" He said, "Yes, sir." So he came over and showed me one and I looked at it and I said, "I will take one."

Q You said "that fellow right there". Whom do you mean?

A I didn't know his name. This fellow sitting right here (indicating).

Q Is that Charles Seders?

CHARLES SEDERS: Right.

Q Where was Willard Mowder at that time?

A Him and this Mr. Seders was over on the next porch.

Q To whom did you pay the money?

A To Mr. Seders.

Q And who gave you the book?

A Mr. Seders.

Q Where did they have this book?

A They had it in a wooden case or satchel.

Q Could you see inside that satchel?

A No, sir.

Q Why do you say they had it in the satchel?

A Well, he was carrying it.

Q Who do you mean by "he"?

A I don't know his name.

Q Mr. Willard Mowder?

A Yes, sir.

Q That is the man to whom you are pointing?

A Yes, sir.

Q Was the satchel opened in your presence?

A Yes, sir.

Q Were there other books in there?

A There was some, yes, sir.

Q What was the name of the books that you bought?

A Salvation.

(Witness hands a book and a pamphlet to Mr. Trescher)

Q This book with the red binding called Salvation is the book—

A That's the book.

Q —that these defendants sold to you and for which you paid a quarter?

A Yes, sir.

Q Did you buy any other books from them?

A No, sir.

MR. TRESCHER: I will offer in evidence at this time the book Salvation.

The Court:

Q There is one thing I want to ask you. When these men were on your porch you say your brother answered the door. Were the two of them on the porch together?

A I couldn't swear to that. I wasn't at the door.

CROSS EXAMINATION

Mr. Hessler:

Q Where were you, Mr. Detruf, when Mr. Seders and Mr. Mowder came to your home?

A I was in the front room.

Q You stated that your brother wasn't interested or told them that he wasn't interested?

A He said he wasn't interested.

Q Were you interested in what they had?

A Well, I was curious.

Q You were curious?

A That's right.

Q Where were they when you first saw them?

A They were next door.

Q They were next door?

A Next door.

Q How did you come to get in conversation with them?

A I went out on the porch and I told Mr. Seders—

Q What did he say?

A I said, "How much are your books?" And he says, "Twenty-five cents". Then I says, "May I look at them? And he said yes, and him and Mr. Mowder came over and they stood on the steps and he opened the suitcase that Mr. Mowder give him and took the book out and I looked at it and I said, "I will take them."

Q What prompted you to take it? Are you interested in the subject?

A No.

Q Are you interested in the subject "Salvation"?

A No.

Q You are not interested?

A No.

Q Did you look through the book?

A Yes.

Q Did you read where it says, "Diselosing God's provision for man's protection from disaster and salvation to life everlasting in complete happiness?"

Mr. Hessler:

Q What was your reason for buying them?

A Just curiousness.

Q After you got the books then what did you do?

A I went in and glanced through them and sat down and ate supper.

Q Then what did you do?

A I got up and went upstairs and fell asleep.

Q Did you call the police?

A Yes, sir.

Q You did?

A Yes, sir,—I did not; my mother called.

Q Did you tell your mother to call them?

A No, I didn't.

Q Why did she call them?

A I couldn't answer that.

Q Then what did you do? Did you go out with the police and point out where—

A Yes, sir.

Q You did that before you ate supper?

A Yes, sir.

Q Before you ate supper?

A Yes.

Q As soon as the police arrived you went out with them to look at these—

A I waited for them on the porch until they come up.

Q Why did you do that?

A After mother called I had to wait until they came up.

Q You bought the books, secured the books, rather, at your own request? Then why did you, why were you interested in having these men arrested?

A It wasn't my idea.

Q Whose idea was it?

A Mother's.

Q It was your mother's idea?

A Yes.

Q And you bought the books—was it your mother's idea that you go out and buy the books?

A No, it wasn't.

Q Whose idea was that?

A That was mine.

Q Did you hear any conversation at the door between the men and your brother?

A No, sir.

Q What was the exact conversation between you and Mr. Seders?

A Only what I told you, about me calling them over.

Q And just what did he say?

A I couldn't remember.

Q You don't remember what he said?

A That's right.

Q And yet you had sufficient interest in the books to give him a quarter for them?

A Yes, sir.

Q Have you read the books since you got them?

A I haven't had time.

Q You haven't had time?

A No, sir.

FRANCIS KRAMER, a witness for the Commonwealth, recalled, having previously been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q Did the defendant, Charles Seders, give you his home address?

A Yes, he did.

Q What is that address?

A 3181 Weir Avenue, Weirton, West Virginia.

Q Did the defendant, Willard Mowder, give you his address?

A Yes, he did.

Q What is that address?

A It is Virginville, West Virginia. He gave me his age too; Willard is 18 and Charles is 27.

Q Did you receive any complaint with reference to Robert Lamborn?

A Yes, I had a call, a complaint on it.

Q What did you do with reference to that complaint?

A Well, I found out that they bought a book from him.

Q What was your complaint and what did you do?

A About two parties being up there and annoying the neighbors—

Q Up where?

A Up on North Seventh Street. I asked them what the trouble was. They said there was a Jehovah Witness up here going from door to door, and I asked them if they were selling anything. They said they was. They said they bought a book from them.

Q. Who were you talking to?

A. I was talking to Clair up there on Seventh Street.

Q. All right, what did you do?

A. I went up with the police car, me and Mr. Cowan—

Q. He is an officer?

A. Yes, sir.

Q. Then what did you do?

A. I went up there and had this Jasper (indicating) over here point the fellows out to me, because he was up when they bought the books up at Clair's place.

Q. Where was the defendant, Robert Lamborn, when you arrived there? Where did you first see him?

A. Well, I passed him up and they said they were down the street there and the fellows is down there close by, for me to go down and they would identify them.

Q. Did you go down?

A. Yes, sir.

Q. Where did you see Robert Lamborn?

A. They were at the house on the corner there and Seventh Street.

Q. When you say "They" who do you mean?

A. That would be two parties, Robert—

Q. Robert Murdock, Jr. and Robert Lamborn?

A. Yes, sir.

Q. Are they here now?

A. Yes, they are.

Q. Can you point them out?

A. I don't know their name for name, but these are the two fellows (indicating).

MR. TRESCHER: Which is Robert Lamborn?

MR. LAMBORN: I am.

Q. And the other is Robert Murdock, Jr.?

A. That is the names they give.

Q. Where were they? Were they out on the street or at the house?

A. They was at the house.

Q Were they on the porch or at the door or where?

A They was up at the door talking to a party there.

Q What did you do?

A Mr. Cowan he got out of the car and placed them under arrest.

Q Did you have any conversation with them?

A Yes; just about the same as the other ones.

Q Did they have any equipment of any kind with them?

A Yes, they had the victrola and that bag that the books were in.

Q Did you know there were books in the bag?

A In that case, yes; we looked in them in that case.

Q About how many books were in that bag?

A I couldn't judge. I would say between ten and fifteen, around that.

Q And who had the bag?

A I just couldn't say which one had the bag. One had the victrola and one had the bag.

Q Did you ask Lamborn and Murdock whether they had a license to sell?

A Yes, I did.

Q Did you ask them whether they had been selling?

A I asked them if they had been selling. There was no answer to that if they were selling or if they weren't selling.

Q What answer did they give when you asked them whether they had a license?

A They were arguing that they were arrested for nothing.

Q Did Robert Lamborn give you his address?

A Yes. Both of them gave me their address off their card, what they was carrying. That is the address (indicating):

Q Robert Lamborn's address is shown to be Cadiz, R. D. No. 2, Ohio?

A That's right.

Q And Robert Murdock, Jr., the address is shown to be Route 2, Box 143, Aliquippa?

A Yes, sir.

Q Pennsylvania I suppose?

A That's right.

Q Did you ask either of these men when they had come to Jeannette?

A No, I didn't.

CROSS EXAMINATION

Mr. Hessler:

Q Did you see Mr. Lamborn leave any literature?

A No,—at the door where he got him?

Q Yes.

A No.

Q Did you see Mr. Murdock leave any literature?

A No; I didn't go up to that door.

Q You said something about him showing a card. Have you got the card?

A No, I give them back to him.

Q Is that the card (handing card to witness)?

A That's right.

Q That's right?

A Yes, sir.

THE COURT: Let me see that.

(Mr. Hessler hands the card to the Court)

The Court:

Q Are you sure that is the card?

A No, I am not sure, It was a card like that. It had his name and everything on.

Mr. Hessler:

Q Take another look at it. Read it. Did he read it to you?

A No.

Q He just showed it to you?

A He just showed me the card and his name was on it.

Q And you are almost certain that this is the card?

A I won't say certain.

Q It looks like—

A But it is a card something like that.

MR. HESSLER: That is all.

HERBERT BAUGHMAN, a witness called and produced on behalf of the Commonwealth, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q Where do you live, Mr. Bowman?

A Greensburg, R. D.-3, Box 207.

Q Were you in Jeannette on February 25th?

A I was.

Q Where were you?

A 410 North Seventh Street.

Q Whose home is that?

A A girl friend's, Clair's.

Q Did you see the defendants Lamborn and Murdock there during the afternoon?

A I will tell you, when I came up there the other girl friend's boy friend was in the car with me and I came up with the car and just at that time they were entering the house and we went in the house and they had a victrola setting on a footstool there and it was playing a record. Those two fellows there, whatever their names is, they were setting on the couch—

Q You mean Mr. Lamborn and Mr. Murdock, the two defendants?

A Yes. They were sitting on the couch and that record was playing. It was playing something about downing the Gospel or something like that. I didn't pay no attention to it, because I wasn't interested in it; and as far as leaving the house, I had nothing to do with the house, but I can witness

that I saw them have the pamphlets in the case and saw them give it to my girl friend here and she gave them a quarter for it.

Q. Did they say anything about the price of the pamphlet?

A. They did. They said usually what they got for them was 25c. They set their own price. It wasn't no donation or anything. That is what they said, the price of them were a quarter.

Q. Who was it that paid the quarter?

A. Virginia Clair paid the quarter.

Q. Do you know what kind of a book she got?

A. The same thing as that (indicating).

Q. It was a book similar to the exhibit which is called Salvation and has already been offered in evidence—

A. That's right.

Q. —in this case?

A. That's right.

Q. Was that the only thing that was turned over?

A. That is the only thing. A small pamphlet like that (indicating). She has it there.

Q. You mean there was a pamphlet called Government and Peace which accompanied the book Salvation?

A. That's right.

Q. Where did they have these books?

A. They had them in a small suitcase and,—what is your name?

MR. MURDOCK: Murdock,

A. (continuing) He is the one that was carrying the case and the other fellow was taking care of the victrola.

Q. And when they left did they leave together?

A. They did.

Q. Did you see where they went from there?

A. I did. I followed them in my car.

Q Where did they go?

A Where Mr. Kramer picked them up.

Q Did they go direct from Clair's home—

A That's right.

Q —to the house at the corner?

A That's right.

MR. TRESCHER: That is all.

CROSS EXAMINATION

Mr. Hessler:

Q What is your name?

A Herbert Baughman.

Q Where do you live, Herbert?

A Greensburg, R. D. 3, Box 207.

Q Did you buy any of the books from,—get any of the books from Mister—

A I did not.

Q —from Mr. Murdock?

A No, I did not.

Q But you stated that you heard a record played?

A I did.

Q Can you call just any of the statements on that record?

A Well, I can't recall any statements on the record because I didn't pay that much attention to it, because I wasn't interested in it whatsoever.

Q You said something about a statement that it was downing religion. What did you just mean by that?

A Well, what is what you were selling?

Q Well, I am asking you. You made a statement that the record stated that it was downing religion. What do you mean by that?

A Do you have the record here?

Q Yes.

A Play it and—

Q Would you like to play it?

A No, I wouldn't like to play it. I am not interested.

Q You made a statement it was downing religion. Can you clarify that? Can you clarify that statement by some—

A Well, some of the wording that is in that book and I take from the record some of that same wording in there, downing the priests of the Catholic Church and whatsoever.

Q It says what?

A That they were downing the priests.

Q Just find out where in the book it says downing the priests. (handing book to witness).

THE WITNESS: I did for the simple reason that the police called me and advised me to do it because they was doing something unlawful. That is what they told me.

Mr. Hessler:

Q All right, we would like to have you find in the book—

A That doesn't have no connection with this whatever.

Q Maybe you would like to retract that statement?

A I wouldn't like to retract it.

(One of the Clair girls present in the courtroom attempts to point out a passage in the book *Salvation* to the witness)

Mr. Hessler:

Q One or two more questions. You stated the police called you. How did the police know the gentlemen were at your place?

A The police didn't call. A friend that had already gotten some of them called and said if they come, in order to assist the police to arrest them that we should buy a book, that that is the only way they could pick them up, by buying a book from them. That is just what I done. I am just a witness. I wasn't at the house when it happened.

Q You weren't at the house when it happened?

A I wasn't there when the phone call came in whatsoever. I am just testifying that I seen them sell the book and whatsoever.

Q Who was it that called? The priest called—

THE COURT: He said he didn't know.

A I wasn't even there when the phone call came.
Mr. Hessler:

Q You said something about,—what was your purpose in following these gentlemen in your car?

A For the simple reason they were coming up there. I was just assisting the officer. He said they would be right up, and I was following those two gentlemen over there down the street in order not to lose track of them.

Q You wanted to be sure that they arrested them?

A That's right, because they was doing something unlawful, absolutely.

MR. HESSLER: That is all.

VIRGINIA CLAIR, a witness called and produced on behalf of the Commonwealth, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q Where do you live, Miss Clair?

A 410 North Seventh Street.

Q Were you home on February 25th?

A Yes, I was.

Q Did you see these two defendants—

A Yes.

Q —at your home?

A Yes.

Q What time did they come there?

A Just around 5:30 I suppose. The later part of the afternoon anyway.

Q Will you tell what they did after they came there?

A They came in, it was cold, they started to play this record. My sister said it would be too cold to stand there with the door open. They said they could come in. They came in and sat the victrola down on the stool and played this victrola record on the victrola. We were all standing around waiting because we were in a hurry to go out, we wanted to eat our supper and go out, and when they were finished playing they said would we buy this book, take one of these books—

Q Which book do you mean?

A The red book (indicating).

Q That is the book called Salvation?

A Yes, sir.

Q Did you bring that book with you this evening?

A Yes.

Q All right, what did you say when they asked you whether you wanted to buy that book?

A My sister didn't know whether she would want one. We were both sitting there,—I was standing, she was sitting there. She said she didn't know whether she would want one, and I thought I would want one because I was curious about the book, I had heard about the teachings and I wanted to see what they printed. So I called and I said, "How much are they?" And he said a quarter, and I got the money out of my pocketbook and paid for it.

Q Who gave you the book?

A This man straight across there (indicating Robert Murdock, Jr.).

Q He gave you the book?

A Yes, sir.

Q And to whom did you give the money?

A To him, as he gave me the book.

Q When they came in were they together?

A Yes.

Q Who had the victrolas?

A The other gentleman over there (indicating Robert Lamborn).

Q That is Lamborn?

A Yes.

Q Did you receive any other pamphlets or books at the same time?

A Yes; these two others were with it. He handed them in with it.

Q The two other pamphlets were with the book?

A Yes.

Q Did you pay anything for these other pamphlets?

A Well, he handed them to me all together.

Q Did he have any other books?

A Well, I didn't see any at the time. I just walked in the room and took these from him.

Q Where did he get that book?

A Well, he had it in his hand already, because he asked my sister. I didn't notice where he had got it from, because I was standing in the hallway listening.

Q And your sister was there at the time?

A She left them in the house.

MR. TRESCHER: You may cross examine.

CROSS EXAMINATION

Mr. Hessler:

Q Your name is Virginia Clair?

A Yes.

Q C-l-a-i-r?

A Yes.

Q Where do you live, Miss Clair?

A 510 North Seventh Street.

Q North Seventh?

A Yes.

Q Did you listen to the record all the way through?

A No, not all the way through.

Q Did you hear most of it?

A I heard some of it and it made me mad. I didn't want to hear the rest of it.

Q You didn't hear all of it?

A No.

Q Did you stay in the room while it was playing?

A I was in the hallway but I was within hearing distance.

Q You could hear the record from the time it started until it finished?

A Yes.

Q Just what was in the record that made you—
Mr. Hessler:

Q Now you say you were curious to get a book to investigate what their teachings were, is that right?

A Yes.

Q Have you read the book since you got it?

A I just read part of it. I didn't have time. I just picked out this part of it.

Q Did you enjoy it?

A No.

Mr. Hessler:

Q After securing the books then someone in your home called the police?

A Yes.

Q Did you inquire,—or did you ask them to come up and make the arrest?

A Yes, I did.

MR. HESSLER: That is all.

KATHERINE CLAIR, a witness called and produced on behalf of the Commonwealth, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q Are you a sister of Virginia Clair?

A Yes, I am.

Q Did you see these two defendants, Murdock and Lamborn, at your home—

A Yes, I did.

Q —on February 25th?

A Yes, I did.

Q Just tell what occurred. Did you admit them to the house?

A No, I didn't. I was in the other room. I just saw them there. I didn't buy the book from them. It was my other sister that left them in (indicating Lillian Clair).

Q Were you present when anyone did buy a book from them?

A No. I was in the other room.

Q But you saw them at the house?

A I saw them there, before they sold them the books though.

LILLIAN CLAIR, a witness called and produced on behalf of the Commonwealth, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q Your name is what?

A Lillian Clair.

Q You live where?

A Same address, 410 North Seventh Street.

Q Did you admit these two defendants to the house?

A Yes, sir.

Q Did they come there and knock at the door or what?

A They knocked at the door and I opened the door and they started playing that victrola, and it looked like a pretty big record to me. Well, I didn't know what it was all about, so I told them it would take too long, it would get too cold. So they stepped inside the door, made themselves right at home, put the record on the stool and sat down and played all through the record. I didn't even bother listening to it.

because I was making our evening meal and it was out there burning and I had to run out and do that instead of listening to that old record, and when I got back in there it was about finished. I couldn't tell you what it was all about anyway. So when they got up to leave Mr. Murdock opened the case and brought that red book out and that other book and those pamphlets, Kingdom whatever it is. He took that out of his overcoat; he had that in his pocket in his overcoat.

Q Did he have other books in this case?

A Yes.

Q When you say the red book what do you refer to?

A Salvation.

Q The book called Salvation?

A Yes, sir.

Q What did he want to do with that book?

A He asked me if I wanted a book. I didn't want anything we had to pay for, I didn't want to pay anything. My sister over there (indicating Virginia Clair) said she wanted to buy one, because she had heard about them and she was curious to know just what they printed, so she bought one.

Q Did she pay for it?

A Yes, she did.

Q Do you know how much she paid?

A Yes. She asked Mr. Murdock how much and he said

25c.

Q Where was Lamborn at that time?

A Right beside him.

Q And when they left who had the victrola?

A Mr. Lamborn I guess.

Q And who had the case of books?

A Mr. Murdock carried that.

Q When you say it was a case of books what do you mean by that?

A It was a suitcase; it was a little suitcase. He had the lid opened and books piled in it.

Q Do you know how many books were in there?

A I couldn't say.

Q Was there more than a dozen or more than twenty or how many approximately?

A Well, I judge there would be about a dozen in there. It wasn't a very big suitcase. It had all the red books and those other pamphlets in there.

CROSS EXAMINATION

Mr. Hessler:

Q What is your full name?

A Lillian Clair.

Q Miss Clair, when your sister asked Mr. Murdock the price of the books didn't he say something about a 25c contribution?

A He said 25c.

Q You didn't hear him say anything about a contribution?

A No, I didn't pay that much attention to him.

Q He may have said it and you wouldn't be certain?

A I couldn't swear to it.

VIRGINIA CLAIR, a witness for the Commonwealth, recalled, having previously been duly sworn, testified as follows:

CROSS EXAMINATION

Mr. Hessler:

Q Do you recall Mr. Murdock saying something about a contribution?

A No. It was like this: I said, "How much?" And the one gentleman, Mr. Murdock, said 25c. He answered my question. The other gentleman said, "The 25c is to print more books." That is the way it was, but he answered my question to the price as 25c.

Q But the other gentleman, Mr. Lamborn, corrected him and said that the 25c was—

A Well, to the man that had the book in his hand that was selling me the book, I asked him and he said 25c, and the other man wasn't selling the books.

Q But he clarified it and stated—

A He wasn't selling the books.

Q But you heard him distinctly say that the 25c was for printing more books?

A Yes.

REGIS DETRUF, a witness for the Commonwealth, recalled, having previously been duly sworn, testified as follows:

CROSS EXAMINATION

Mr. Hessler:

Q I would like to ask you, Mr. Detruf, if Mr. Seders didn't say to you that the book was left on a 25c contribution?

A I didn't understand him to say that, no, sir.

KATHERINE CLAIR, a witness for the Commonwealth, recalled, having previously been duly sworn, testified as follows:

DIRECT EXAMINATION

The Court:

Q Did either of these fellows ask you to buy any literature?

A No, because I didn't go in the room at all.

FRANCIS KRAMER, a witness for the Commonwealth, recalled, having previously been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q Mr. Kramer, do you know or have you seen prior to today defendants, Anna Perisich and Anthony Maltezos?

A Yes, sir, I saw both of them.

Q Where did you see them?

A Well, I was at my home—

Q Where is your home?

A No. 19 Thirteenth Street, West Jeannette, around 4:40 or 4:45. A rap come to the door—

Q Were you in uniform at the time?

A No, I wasn't.

Q Were you dressed in civilian clothes?

A Yes, I was.

Q Did the defendants know you were an officer?

A I don't think.

Q All right, when the rap came at the door what did you do?

A I went and answered the door and they asked me if I was interested in any books. I hesitated there for a minute and I said yes, and this gentleman here (indicating)—

Q By this gentleman who do you mean?

A Anthony Maltezos, and Anthony asked me if I would like to hear that record he had in his victrola. I said, "Yes, come on in." So he came in—

Q Did anybody come with him?

A Him and Anna Perisich, she came in along too. So they put the record on and played it, the record run down, and I said, "It's a damn good record." That's the words I said. So they asked me if I was interested in buying any books. I said I might. So they handed me this book Salvation. I opened it up and started to look at it and I asked them how much they charged for these books. They says 25c. So I hesitated for a moment, and I said, "All right, I will take one," and gave them a quarter.

Q Who did you give the quarter to?

A To Anna Perisich. I gave a quarter to Anna and she gave me the book, and she says, "I am going to give you this book."

Q By this book you mean the pamphlet called Government and Peace?

A Government and Peace, yes, sir. I said, "O. K., thanks." I said to them, "Have you got any Bibles?" He says, "Yes, the Bible will cost 25c more." He said, "You'll get a bargain on that."

Q Who said that?

A This gentleman right here (indicating).

Q That is Anthony Maltezos?

A Yes. He says, "You're getting a bargain on that; that book is worth three dollars or three and a quarter." I said, "No, this will be enough for me to read." Well, they started to get their brief case and victrola put together and I said, "I'm sorry, you both are under arrest." They wanted to know what for. I told them for soliciting and selling books without a permit. I said, "I'm a policeman."

Q Did you ask them whether they had a license?

A Well, no, not just then; and then this woman spoke up, she said, "This is only a donation; this is only a donation." I said, "Well, I'm sorry, I'll have to take you up and lock you up." So on my way going up I asked them if they had a permit or license to go around.

Q What did they answer?

A They said no.

MR. TRESCHER: All right, do you want to ask some questions (addressing Mr. Hessler)?

CROSS EXAMINATION

Mr. Hessler,

Q Officer Kramer, when you secured that book did Mr. Maltezos make it very clear that the book was left for a contribution of 25c?

A No, not until they were under arrest.

Q When you secured the book you secured it with full knowledge of your intent to place them under arrest as soon as you had got it?

A Well, yes. If they showed me a permit or a license—

Q You didn't ask them for a permit though?

A I asked them for a permit before I left my home.

Q You didn't say that; you said on the way down.

A On the way out I says.

Q But you had placed them under arrest before you asked them for a permit, didn't you?

A Yes, I did.

Q In other words; you bought the book knowing that you were going to place them under arrest?

A If they didn't have a license.

Q But you didn't ask them if they had a license?

Mr. Hessler:

Q Isn't that the way it was?

A I wouldn't say later on. A few seconds.

THE COURT: Well, I will clear that up.

The Court:

Q Did you have any knowledge before that there weren't any permits issued for them?

A I knowed it.

Q How did you know it?

A Because we had trouble and I asked the Chief,—I told the Chief to let me know if he ever issued any permits.

Q You were up here during the day, were you?

A Yes, sir, I was.

Q The other arrests were made previous to that?

A Yes, sir.

Mr. Hessler:

Q Did they show you a card?

A No, they didn't show me their card.

Mr. Trescher:

Q Did Anna Perisich give you her address?

A Yes, she did.

Q Is that 927 Toman Avenue?

ANNA PERISICH: 929 Toman Avenue, Clairton.

A That is the address she give me.

Q Did Anthony Maltezos give his address as 226 Eleventh Street, McKeesport, Pennsylvania?

A Yes, he did.

Q And their ages respectively were 40 and 38?

A Yes, sir.

The Court:

Q I want to ask, what was said about the Bible? I didn't hear that very distinctly.

A Well, the Bible, I asked them if they had any Bibles and they said, "Yes, it will cost you 25c more," and when I said, "No, this will be enough reading in here for me I think," he said, "Well, you're getting a bargain, the Bible is worth three to three and a quarter."

Mr. Hessler:

Q Did they play a record for you?

A Yes, they did.

Q Did you listen to the record?

A I listened to some of it.

Q And you found nothing objectionable in the record, did you?

A Well—

Q You didn't hear them downing religion, did you?

A Why, I used the alibi of a damn good record, for my opinion, for my police work.

Q It was a good record?

A No, for my police work, to find out about the books, if they were selling the books, to make sure of myself.

Q I don't understand that.

A I said it was a damn good record; I wanted to make sure that they were selling books and get everything clear.

Q You told them it was a damn good record?

A That's what I said.

Q And you used that as an alibi to make sure they were selling the books?

A Yes, sir.

OTHMAR SEILER, a witness called and produced on behalf of the Commonwealth, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Treschier;

Q Your full name is Othmar Seiler?

A Yes, sir.

Q And you are one of the firemen of the City of Jeanette?

A Yes, sir, and sworn in as a police.

Q As a police officer as well?

A Yes, sir.

Q Mr. Seiler, were you at your home on the 25th of February?

A Yes.

Q Did you see the defendants, Anastasia Tzanes and Ellaine Tzanes,—did you see those two defendants at your home?

A Yes, sir.

Q Where is your home?

A 50 Cuyler Avenue.

Q In the city?

A Yes, sir.

Q About what time did they come to your home?

A Around 11:40 in the morning.

Q What if any equipment did they have with them?

A They had a portfolio of some kind with books in it and I think they had a victrola. They didn't offer to play anything for me. Each one of them was carrying something.

Q Did you answer the door?

A No, my wife answered the door and they showed her a card and she called me and I went out and I just glanced through the card: I didn't read much about it, and I seen something about 25c for books at the bottom of the card. So I said to the ladies, "Are you people selling books?" She said yes. I said, "How much are they?" She said, "They are a quarter." She said, "But for 50c we could sell you this book and sell you the both." I said, "How much do you want for this book I have in my hand?" She said, "That book is a

quarter and if you buy the both of them you can have them for 50c." So I just bought the one book for a quarter..

Q What was the name of the book you bought?

A I think Creation. It is in the desk here locked up.

(After the desk was unlocked the witness produced a book and a pamphlet)

Q Is the book with the blue or combination of blue and green cover called Creation the book that you bought?

A That is the book I bought, and when I bought the book the lady said, "Here I will give you this little pamphlet with it."

Q And by that you refer to the pamphlet called Government and Peace?

A Yes.

Q Who handed you the book?

A The old lady.

Q That is Anastasia?

A Yes.

Q And to whom did you give the money?

A The young lady.

Q That is Ellaine?

A Yes.

Q What did you then do, Mr. Seiler?

A Well, after I had give her the money I told her she sold this book to an officer and I would have to take her down to jail and put her under arrest,—I would have to take her to jail. She said she wouldn't go to jail unless she was put under arrest, so I said, "Well, you are under arrest, so you will have to go down with me." Coming across the street she wanted to know where my badge was. I said, "I don't have it with me but I can very soon prove I am an officer." There was no one else here when I came down; I went through the desk with the keys; I said, "I am very familiar with this," and I said, "I guess you know I am an officer by this time." She said, "Yes, I think you are an officer now."

Q Did you ask the defendants or either of them whether they had a license?

A No.

Q Did you ascertain from the records here that they did not have a license?

A From the past records, that is the reason I didn't bother asking them whether they had a license.

Q Where did they have these books?

A In one of them portfolios, sort of a little satchel they had with them in.

Q Did they have a number of books?

A Well, they didn't have so many in it. They had just the one Bible I think.

Q But other copies of the book called Creation?

A In that?

Q In that—

A Well, I didn't see the name of them.

Q But there were other books?

A Yes, sir.

CROSS EXAMINATION

Mr. Hessler:

Q What did you say your full name is?

A Seiler, S-e-i-l-e-r.

Q What is your first name?

A Othmar, O-t-h-m-a-r.

Q Mr. Seiler, you stated that they handed you a card,—do you recognize that (indicating),—something about 25c on it?

A No, I don't think this is the card.

Q Take a look at the bottom. You said something about 25c at the bottom.

A That don't look like the card to me.

Q You said you read something about 25c?

A That isn't the card I seen.

Q Just what was the card?

A It is a card sort of that color, but that isn't the card.

Q Was it one like it?

A I answered your question on the card.
Mr. Hessler:

Q You stated you placed them under arrest and you did so without asking them whether they had a permit or not?

A Yes.

Q You didn't know at that time whether they had a permit or not,—it made no difference to you?

A I knew they wouldn't have gotten it if they did ask for it.

Q You are almost certain of it?

A Yes, positive.

COMMONWEALTH RESTS

MR. HESSLER: At this time, for the sake of the record, we would like to make a motion on behalf of the defendants.

The defendants move to dismiss this case and for their discharge upon the following grounds:

That the complaint is invalid and does not state facts sufficient to constitute an offense under the law.

That the ordinance in question is in direct conflict with the Constitution of this State and of the United States, in this: that it restricts the freedom of speech, freedom of press, and freedom of worship of Almighty God.

That the ordinance in question is in direct violation of the Fourteenth Amendment of the Constitution of the United States.

That the evidence by prosecution shows defendants are not guilty.

The defendants therefore pray this Court to dismiss this case and that they be discharged.

I make that motion on behalf of the eight defendants. I will leave with you a copy of the motion.

(Mr. Hessler hands to the Court a copy of the motion just made in each individual case.)

THE COURT: The motion is denied. Proceed with the defense, if you have any.

DEFENDANTS' CASE

ROBERT LAMBORN, one of the defendants, called as a witness in his own behalf and on behalf of his co-defendants, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Hessler:

Q Mr. Lamborn, what is your address?

A Cadiz, Ohio, R. D. 2, Route 2.

Q And your full name?

A Robert Lamborn.

Q What is your occupation?

A My occupation is as a minister to preach the Gospel of God's Kingdom, better known as one of Jehovah's Witnesses, who go about from house to house as commanded by Almighty God. In Acts 20: 20 is found an account of that, the same as the Lord Jesus did preach the Kingdom of Heaven is at hand, and if you would turn to Isaiah 43rd chapter—

Mr. Hessler:

Q Now, Mr. Lamborn, just tell us what you did when you went to the homes in Jeannette.

A I visited the home of the young lady over there (witness indicating one of the Clair sisters); she invited us in to play the recording entitled Snare and Racket, and after the recording finished Mr. Murdock did the talking.

Q Will you play some of that record, Mr. Lamborn, so she can identify the record?

A Yes, gladly. We presented this record to the lady: (The record referred to was played on the victrola by the witness, and is as follows:) It is often said that religion is a snare and a racket, and why? Religion had its origin with

Satan who employed religion to reproach Jehovah, the Almighty God. Religion was first organized with Nimrod as leader and he was the one whom the people were taught to worship, and that was done in defiance of God.

The original inhabitants of Canaan were devil worshippers. God sent his chosen people the Israelites, to inhabit that land and in order to safeguard them from religion God commanded that the Israelites should worship him alone and not worship another. His command to the Israelites concerning religion informed them that religion would turn them away from God and lead them into destruction, and then he added these words: "Neither shalt thou serve their religious gods, for that will be a snare unto thee." Again God said to his chosen people whom he had brought into Canaan, "And ye shall make no league with the inhabitants of this land; their god shall be a snare unto you." The Israelites fell under the influence of religion, became ensnared and worshiped idols and concerning this it is written in the Psalms, "And they served other idols which were a snare unto them."

When Jesus came, the clergy of the Israelites had adopted and were practicing religion instead of the true worship of God and Jesus told them that by so doing they had made void God's word and prevented the common people from hearing the truth. Those clergymen claimed to be serving God, but Jesus told them in plain words that they were serving the Devil. The clergy had caused the Jewish nation to be ensnared by religion. Even Saul, afterwards called Paul the Apostle, was caught in that snare, and when he learned the truth he became a Christian. Paul wrote to the Christians these words: "For ye have heard of my life course in times past in the Jews' religion, how that beyond measure I persecuted the church of God and wasted it." Furthermore he stated, when before King Agrippa, charged with the crime of serving Christ, "Those who knew me from the beginning, if they would testify to the truth, would know that after the most straightest sect of our religion I lived a Pharisee."

There are many religions, all of which tend to turn the people away from the true Almighty God. Because religion is wrong does not mean that the many people who ignorantly practice religion are bad. For instance, the Democratic party says that the principles of the Republican party are bad. That does not mean that all Republicans are bad. Religion is wrong and a snare because it deceives the people, but that does not mean that all who follow religion are willingly bad. Religion is a racket because it has long been used and is still used to extract money from the people upon the theory and promise that the paying over of money to a priest will serve to relieve the party paying from punishment after death and further insure his salvation. Surely Almighty God is not a party to granting favors upon a money consideration. A small number of men lead in religion and extract money from the great masses who ignorantly pay out their money and receive nothing in return. That is the worst kind of racket.

Christianity means to follow exactly in the footsteps of Christ Jesus by believing and teaching the Bible, the word of God, and which is given for the instruction of all people who love righteousness. The books entitled "Enemies" and "Salvation" show the clear distinction between religion and Christianity and aid all sincere persons to choose the right way. By means of religion the Scriptures say that men pretend to worship God with their mouths but their heart is far removed from him. Those who practice Christianity worship God in spirit and in truth. Religion leads men to destruction. Christianity is the way to salvation and life everlasting. The truth is placed before the people that they may have the opportunity to choose which they desire: Religion, with death; or Christianity, and life.

MR. HESSLER: I will offer the record in evidence and I would like to leave the record as part of the evidence.

Mr. Hessler:

Q Then what happened, Mr. Lamborn?

A After the record had finished Mr. Murdock did the talking.

MR. HESSLER: I would like to ask Mr. Murdock a question now.

ROBERT MURDOCK, JR., one of the defendants, called as a witness in his own behalf and on behalf of co-defendants, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Hessler:

Q All right, Mr. Murdock, what did you do?

A Well, after the lecture was finished, well, then we brought to the attention of the people words to the effect that we were engaged in the work of proclaiming Christ's Kingdom by means of Watch Tower Bible Publications, and then we presented to the people, the woman that answered the door, the Salvation book, and which sets forth the life provision which Christ Jesus has promised to those who love and serve him, and also we brought to their attention that if a person desires to obtain salvation it is to his advantage to carefully consider the book Salvation with the Bible, and in that way you will receive some very important truths. Also the book Government and Peace, we brought it to their attention that that book contains a vital Bible message, which if a person studied they would also see what kind of government we would set up, and also that if they are righteous and love the Lord and seek to serve Him they will have great provisions for them in the Theocracy.

Q Then what took place?

A Then I presented the book to this woman there (indicating)—

Q Which one?

A The one with the glasses on. I don't know her name.

MR. HESSLER: Is that Lillian?

LILLIAN CLAIR: Yes, sir.

A (continuing) Just as she testified; that she didn't want anything she had to pay for, and then there was another one there, but I am not sure, I can't identify her, this one here (indicating), she was the one that said she wanted to obtain the book; she said she would take it. So then I presented to her the Government and Peace book together with the Salvation book and the Kingdom News, and in front I made it plain that our work is one that the contribution was one to aid in further publishing others and not to help us. I remember making that very plain so that they wouldn't think they were taking it just to help us, but that they were taking it for their own benefit. So then I presented the book to them and she accepted it and contributed a quarter, and we thanked them and left.

MR. LAMBORN: We also told them to be sure to read the publications.

MR. HESSLER: That is all.

THE COURT: I would like to ask you, your name is Murdock?

A: Yes.

The Court:

Q Are you paid for this work on a per diem basis?

A No.

Q Are you paid at all?

A No.

Q You do this free of charge?

A In what way? I don't quite understand your question.

Q Are you paid anything for what you do?

A No.

Q Do you travel at your own expense?

A I did.

Q Do you now?

A Yes, I did completely from Aliquippa.

Q You received no remuneration from anyone at all—

A I don't understand that word remuneration.

Q You receive no pay for your work at all?

A No.

ROBERT LAMBORN, one of the defendants, recalled as a witness, having previously been duly sworn, testified as follows:

The Court:

Q How about you, do you receive any pay for your work at all?

A The same; the same answer as he gave; I receive no pay, exhibiting of the Kingdom's Message.

Q Did you get anything of value from anyone for the work you did?

A We only received a small contribution. We told the people that this small contribution was used to publish other like publications so that the people may be further enlightened upon the Scriptures and learn of God's gracious provisions made for them—

Q What I am talking about is, were you paid by these Watch Tower people for the work you did?

A No.

Q You do all that work free of charge?

A Free of charge, on my own expense.

CROSS EXAMINATION

Mr. Trescher:

Q Mr. Lamborn, when you were interrogated in your examination in chief you stated that your occupation was that of minister?

A Yes.

Q Is that correct?

A Yes.

Q Is that your only occupation?

A My only occupation is minister to preach the Gospel of God's Kingdom.

Q Do you have no income from that occupation?

A No, sir, I don't.

Q Where do you live?

A In Cadiz, Ohio, on a farm.

Q How long have you been a minister?

A For about a year.

Q How do you become a minister?

A Through the same way that Jehovah's Witnesses are exhibiting their Kingdom Message from door to door, I became interested.

Q And how did you become a minister?

A By learning more of God's gracious provisions made for humankind and, as Isaiah says, "Ye are my witnesses, saith Jehovah, and I am God." And he sends forth His witnesses to proclaim His message, and if we want to gain salvation through everlasting life we must tell the people of God's gracious provisions.

Q Did somebody make you a minister?

A No.

Q What did you do to become a minister?

A We go out from house to house exhibiting publications.

Q Where do you get those publications?

A I get those publications from the Watch Tower Bible and Tract Society, Brooklyn, New York.

Q How many publications did you have with you yesterday, the 25th?

A I couldn't make an exact statement. I don't know.

Q Did you have a suitcase full?

A I had my little satchel full, yes.

Q When had you gotten those?

A Before I left home.

Q That is before you left Cadiz, Ohio?

A Yes.

Q When did you leave Cadiz?

A Saturday, about 11:00 o'clock in the morning.

Q How did you go?

A By automobile.

Q Do you have your own automobile?

A No; I have my dad's automobile.

Q Had you paid for those publications?

A Yes.

Q How much do you pay for them?

A I couldn't say the exact amount, because I didn't know how many publications that I had.

Q How much do you ordinarily pay for this book Salvation?

A It is offered to the public on a contribution of 25c.

Q How much do you pay for it?

A Twenty cents.

Q Do you pay cash before you get it?

A Sometimes.

Q Well, did you pay for these particular ones?

A Yes.

Q You paid 20c each?

A For the bound volume Salvation and other like publications.

Q And you pay 20c each for the Bibles that you sell?

A Well, I didn't have any Bibles with me.

Q Approximately how many books of Salvation did you have with you?

A I had three when I left Cadiz. I had two when I started to witness here in Jeannette.

Q Do you pay anything to the Watch Tower Society for the pamphlet Government and Peace?

A That is given to the publishers for a small sum also. The publishers are Jehovah's Witnesses.

Q But you have to pay for them before you get that, is that right?

A Sometimes. You can obtain them on credit of course.

Q You can obtain them?

A Yes.

Q And when you do obtain them on credit you are billed at the rate of 20c apiece?

A Not on Government and Peace.

Q I am talking about the book Salvation and similar publications.

A Yes.

Q And so the bound volumes you must pay for at the rate of 20c each, whether you buy them on credit or whether you pay for them in cash?

A Yes.

Q Did you pay cash for these particular ones?

A Yes.

Q How many books had you bought altogether?

A For this trip do you mean?

Q Yes.

A I had three Salvation books and two Enemies books.

Q Do you rate the book Enemies the same as the book Salvation and do you pay 20c per volume for it?

A Yes.

Q When had you bought the books for this particular trip?

A Just the day that we left, in the morning.

Q Had you sent to New York for them?

A No.

Q Whom did you buy them from?

A We have a Cadiz, Ohio Company, of Jehovah's Witnesses and all companies are provided with ample stock and we obtain them from the stockroom, and contributed or rather paid the amount that they cost.

Q And you paid \$1.00 for those five books?

A Yes.

Q Paid it in cash?

A Yes.

Q And you got some tracts with them?

A What?

Q Some tracts or pamphlets such as Government and Peace?

A Yes.

Q You didn't pay anything for those?

A Yes.

Q How much did you pay for the pamphlets Government and Peace?

A Two and a half cents,—rather three cents.

Q Each?

A Yes.

Q How many of those did you get?

A I don't recall.

Q Do you go out every day with these books exhibiting the Word of God as you describe it?

A Every day in my spare time.

Q Do you always get your books from the supply house at Cadiz, Ohio?

A Yes.

Q Do they maintain an office and a storehouse there?

A We have an office and a storehouse in our home.

Q Do you work with other people from other parts of the country?

A Well, I work mainly around Cadiz, Ohio. I attended this assembly at Braddock, Ohio—

Q When?

A February 24th and 25th.

Q The 25th was yesterday.

Mr. Hessler.

Q You mean Braddock, Pennsylvania?

A Braddock, Pennsylvania, rather.

Mr. Trescher:

Q And so you left Cadiz on Saturday the 24th and went to McKeesport, did you say, or Braddock, Pennsylvania, rather?

A Yes, Braddock.

Q And were other people there?

A Yes.

Q Other Witnesses?

A Yes.

Q How many?

A I don't know.

Q How many did you see?

A I didn't take any account of them. I wasn't there to count how many was there. That wasn't my purpose.

Q Did you go to any homes in Braddock?

A No.

Q Didn't make any solicitations at all on the 24th?

A No.

Q Didn't dispose of any books or any tracts of any kind?

A No.

Q How did you know to go to Jeannette on the 24th?

A How?

Q Yes.

A They give us that territory.

Q Who gave you the territory?

A The Territory Servant.

Q Who is the Territory Servant?

A I don't know his name. He is a stranger to me.

Q Where did you see him?

A In Braddock.

A How do you know he was a Territory Servant?

A How do I know?

Q Yes.

A He was taking care of all the territorial data.

Q In other words, does your organization split up and a certain number of you go to a particular territory or community and make solicitations?

A We don't make solicitations.

Q Well, make calls then.

A Yes; we offer them the Kingdom Message in printed form and also through the use of phonograph records.

Q Now, then, you say the man who told you to go to Jeannette you did not know?

A No.

Q Why did you go in response to his direction? Wasn't there something that indicated who he was, that he had authority to send you?

A Well, we were all, each given territories to work, to offer the Kingdom Message to, and he give me the territory up around Seventh Avenue or some place around in there.

Q Was that down in Braddock that you were given that territory?

A Yes, sir.

Q You mean somebody down in Braddock told you to take Seventh Street in Jeannette?

A The Territory Servant.

Q They what?

A The Territory Servant did.

Q But you don't know that man's name?

A No.

Q Where did you stay while you were in Braddock?

A Where?

Q I say where did you stay?

A At night you mean?

Q Yes.

A At a sister's home in Braddock, Ohio,—Pennsylvania, rather.

Q Did you take your meals there?

A Yes. We had breakfast there only.

Q Did some of the other Witnesses take breakfast there too?

A Just her herself and my dad. There was three of them in that home.

Q Are there other members of your family also ordained ministers and doing the same thing?

A Yes, all of my family; not my family, but the family are.

Q By the family you mean your father and mother and brother and sister?

A Yes; father and mother and sister and myself. That is four of us altogether.

The Court:

Q This sister that you speak of in Braddock, is that a blood relation?

A Yes. Her home isn't in Braddock; it is in Cadiz, Ohio.

Mr. Trescher:

Q Is she living in Braddock?

A No, she is living in Cadiz, Ohio.

Q I thought you stayed at her home in Braddock?

A I don't think I made such a statement.

Q Where did you state you stayed in Braddock?

A A sister's home. We call each other sisters and brothers in the truth. In other words, she was a friend, a woman. She wasn't no blood relation, if that is what you refer to.

Q That is what I understood when you said a sister's home. Where did you meet in Braddock?

A At the Carnegie Library.

Q Is there a storeroom or an office where the Watch Tower publications are sold to the ministers in Braddock?

A Not in the Carnegie Library, no.

Q In the town?

A Yes.

Q Where is that?

A I don't believe I know. As I said before, I am a stranger around here. I had the literature before I came, so I didn't obtain any literature from Braddock, Pennsylvania.

Q Now, then, you do receive the difference between what you pay for these booklets and what the person who either buys or contributes for them turns over to you, do you not?

A The money that is contributed is turned over to the Watch Tower Society.

Q Don't you receive anything at all?

A No, sir.

Q How do you live?

A I am a farmer by trade. As I said before, I preach the gospel in my spare time.

Q How do the rest of your family live if they—

A We all live on the farm.

Q All live on the farm?

A Yes.

Q You presented some card here which certified that you were an ordained minister?

A Yes, I presented this card to you (witness hands card to the Court who in turn hands it to Mr. Trescher).

Q How did you obtain that card, from whom?

A If you will just read it there you will see.

Q Can't you tell me? It reads "Watch Tower Bible and Tract Society, J. T. Rutherford, President." Did you obtain it from him?

A I obtained it from the Watch Tower Bible and Tract Society.

Q In Brooklyn, New York?

A Yes.

Q Do you know how many came to Jeannette with you yesterday?

A With me?

Q Yes.

A To Jeannette yesterday?

Q Yes.

A Five.

Q Do you know how many Witnesses came altogether?

A I don't have an exact account of it, not.

Q Do you know approximately?

A No, I don't know.

Q Did you have any scheduled meeting place when you got to Jeannette?

A No; we were all given our territories and we were to go to those territories and work.

Q That is, when you were over in Braddock someone whose name you don't even know assigned you a territory in Jeannette?

A The Territory Servant, yes.

Q Were you scheduled to be back in Braddock at any particular time?

A When we finished our territory I believe.

Q How big a territory did you have?

A Well, I couldn't say how big it was, because I don't know the town.

Q And you don't know how many books Murdock had?

A He was carrying the same case that I had. We were working together.

Q Didn't he have any books of his own?

A No.

Q Where did you get this victrola you were carrying with you?

A Where did I get it?

Q Yes.

A I got it from the Watch Tower.

Q Did they supply you with that victrola?

A Yes.

Q And with the record?

A Yes.

Q Did you pay anything for it?

A Yes.

Q How much did you pay?

A Seventy cents for the record and eight dollars for the victrola.

Q Did you pay that in cash?

A Yes.

Q Do you mean to say you have no way of getting that back?

A I don't get what you mean.

Q I mean you are not reimbursed for that in any way by any money?

A Not financially, no. As I said before, Jehovah's Wit-

nesses do their work of their own free will. We pay our own expenses, if that is what you are driving at.

MR. TRESCHER: That is all.

REDIRECT EXAMINATION

Mr. Hessler:

Q You had a card there. (Witness produces card) What does it say on that card? Is that your credentials?

A Do you want me to read it?

Q Yes.

A (Reading) "This is to certify that Robert Lamborn, whose signature—"

Mr. Hessler:

Q Now, Mr. Lamborn, just why do you engage in this work?

A Because I love the Lord and Jehovah God specifically commands us to go forth and preach the Gospel so that other people may learn of the Theocracy or Christ's Government that will be set up here on earth, at which time when this government will be set up, all Satan's wicked organization will be destroyed, and those organizations consist of religion, politics and commerce, and those organizations will be destroyed by the hand of Almighty God.

THE COURT: Put in the record there that he glanced at the mayor when he said "politics".

A (Continuing) And we are commanded by the Lord to go about from house to house exhibiting this Message to the people so that they may have the opportunity to choose whom they will serve. As this record Snare and Racket says, "If you choose religion you will die, and if you choose Christianity you will live."

Q You do this work then in obedience to the command of Almighty God?

A Yes, sir.

Q And is this your method of worshipping Almighty God?

A Yes.

Q By going from house to house and presenting them this information in printed form?

A Yes.

Q Now you accepted the 25c for that book and you stated that you paid 20c and, as the attorney for the prosecution stated, there is a margin of 5c profit. Do you ever give any literature away?

Q Yes.

Q Who pays for the literature you give away?

A I do.

Q Did you give any literature away yesterday?

A Yes.

Q Now you stated something about three and a half cents for this booklet, that you paid for that. Is that the price for that booklet?

A That is the price that is given to the publishers.

Q Did you give any of them away?

A Yes, I gave two of them away the 25th over in Homestead.

[Front of card]

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY THAT Robert Lamborn whose signature appears below, is an ordained minister of Jehovah God to preach the gospel of God's kingdom under Christ Jesus and is therefore one of Jehovah's witnesses; that he is sent forth by this Society, which is created and organized and chartered by law to preach the gospel of God's kingdom, and that Jehovah's witnesses are commanded to obey God by preaching the gospel, which commandments appear in the Bible at Isaiah 61: 1, 2; Isaiah 43: 9-12; Matthew 10: 7, 12; Matthew 24: 14; Acts 20: 20; 1 Peter 2: 21; and 1 Corinthians 9: 16; and that Jehovah's witnesses are compelled to obey God rather than men. (Acts 3: 23; Acts 4: 19; and Acts 5: 29)

THAT in obedience to God's commandments Jehovah's witnesses preach the gospel and worship Almighty God by calling upon the people at their homes and exhibiting to them the message of said gospel in printed form, such as the Bible, books, booklets and magazines, and thus afford the people the opportunity of learning of God's gracious provision for them.

THAT said witness of Jehovah is doing this work of bearing testimony before the people in strict accord with the fundamental law of the land and in obedience to God's law, which is supreme. Any kindness and consideration shown this witness of Jehovah will be greatly appreciated and is certain to call forth the blessing of the Lord upon the one showing such kindness. (Matthew 25: 31-46)

WATCH TOWER BIBLE & TRACT SOCIETY

J. F. RUTHERFORD *President.*

[signature]

Name

Address

[Back of card]

TO THOSE OF GOOD WILL:

All the facts agree that the nations are approaching the great climax. Armageddon is near. Many persons sincerely desire to escape that disaster and gain salvation to everlasting life. Those who are of good will toward Jehovah and His kingdom may have such salvation. Just how may salvation be obtained? The Bible, which is the Word of God and which is infallible, tells of the way. This book SALVATION will help you to learn from the Bible exactly what you need to know.

No religious or other human institution can aid you and gain for you salvation. It is written, "Salvation belongeth unto the Lord." (Psalm 3: 8) Follow His instruction and live.

You may contribute twenty-five cents to the Lord's work and receive a copy of this beautiful book.

The Court:

Q Did you learn yesterday sometime or other that there had been two women arrested of your group in the morning?

A Yes, I heard of it.

Q Did you go around then and tell the people that two of your people had been arrested by local officers?

A Did I go around?

Q Yes.

A I was only in here 20 minutes before we were picked up by the police.

Q How did you learn that two of your people were arrested?

A We were informed.

Q By whom?

A By the brothers in charge in Braddock.

Q You learned that in Braddock?

A Yes.

Q Before you came to Jeannette?

A Yes.

Mr. Trescher:

Q Who were the brothers in charge?

A Brother Hessler and Brother Singer; rather I should say Charles Hessler and Earl Singer.

Q But they were not the Territory Directors that you described awhile ago?

A No.

Q Were they in Jeannette?

A Who are you referring to?

Q Mr. Hessler and Mr. Singer.

A At what time?

Q At any time yesterday that you know of.

A Yes, they came over Sunday evening.

Q That is after you were arrested?

A Yes.

Q But they knew before that some other members had been arrested here in Jeannette?

A Yes.

Q Before they sent you here?

A Yes.

Q You did not have a permit?

A We don't apply for a permit from man.

Q Well, did you have a permit?

A We had a permit from Almighty God.

Q Did you have a permit from the City of Jeannette?

A No.

ROBERT MURDOCK, JR., one of the defendants, recalled as a witness, having previously been duly sworn, testified as follows:

Mr. Trescher:

Q Your home is in Aliquippa?

A Yes.

Q When did you leave Aliquippa?

A Well, I left Aliquippa,—I can't be exact, but it was in the morning pretty early; around about 9:00 o'clock I imagine. Nine o'clock.

Q What day?

A On Sunday.

Q The 25th?

A The 25th I imagine it was.

Q Did you come direct to Jeannette?

A From Aliquippa, no.

Q Where did you go first?

A I went to Braddock.

Q Where did you go in Braddock?

A To the Carnegie Library. On Library Avenue I think it is.

Q Did you know that there was a group meeting there?

A Yes. That is why I went there.

Q How did you know that?

A Well, I was,—well, we are informed through our company of assemblies which we have a privilege to attend. Assemblies are for the purpose of proclaiming Jehovah God's Kingdom and encouraging others to have part in this work.

Q Was that assembly held at Carnegie Library in Brad-dock?

A Yes, and the luncheon was over at, I think,—I am not sure of the place there,—I think it is Masonic,—I think it is the Masonic Hall.

Q Was that luncheon served by the local Witnesses?

A Well, I don't know anything about that.

Q How many people were at the lunch?

A Well, I couldn't give you any idea.

Q What time did you come to Jeannette?

A To Jeannette? I arrived about,—let's see,—it must have been pretty near,—about five o'clock. Pretty near around that time.

Q At whose direction did you come to Jeannette?

A I came of my own accord.

Q Nobody told you to come?

A Nobody told me to come.

Q Nobody assigned you any territory?

A I wasn't assigned territory, no.

Q Are you an ordained minister too?

A Yes, I am.

Q Are all members of Jehovah's Witnesses ordained ministers?

A If you are engaged in preaching the Gospel of Jehovah God's Kingdom you are.

Q Did you have any books?

A No, I didn't, not of my own. I only carried Roberts satchel.

Q Did you have any phonograph?

A Not of my own.

Q Did you ever buy any books?

A From where?

Q From any of the Watch Tower Society stores.

A Yes, I have. I have obtained books.

Q What do you mean, you bought them or not?

A Yes.

Q Did you pay for them?

A I paid for them.

Q How much did you pay for them?

A Well, our company, the Salvation book we receive it at a 25c contribution.

Q You mean you make a contribution of 25c—

A Yes.

Q —and they give you a book?

A Yes.

Q What book did you get for 25c?

A We get all our bound volume publications of that size.

Q How many have you bought?

A Well, I can't be exact, because it has been sometime. Whenever my supply is low and I am able I obtain another one.

Q Where do you ordinarily buy your supplies from?

A Well, what do you mean by buying? You mean obtain them?

Q Yes, obtain them.

A Well, I obtain them from the Ambridge Company of Jehovah's Witnesses.

Q They have a store in Ambridge?

A No, they don't have a store. They have a meeting place.

Q Do they have a storehouse or warehouse?

A Well, they have a stockroom.

Q And they maintain some sort of headquarters there?

A Well, yes, that is a sort of headquarters.

Q How often have you obtained books there?

A Well, I can't be exact. As I say, whenever I see it is needed I would obtain them.

Q About how many times a week or a month would you need books?

A It just depends on the different months. It depends on what we are presenting.

Q What would your average be?

A I couldn't tell.

Q Did you ever obtain any without making a contribution?

A On credit I have, yes.

Q You mean they trusted you for the contribution that you had to later make?

A Yes.

Q Did they charge you up with the contribution?

A Yes, they credited me; they charged me up with a credit slip, yes.

Q And was that at the rate of a contribution of 25c for each book?

A Every bound book, yes; Salvation and the other bound volume.

Q You never got any at the Ambridge store for 20c?

A No. That is what all the publishers obtain for them, 25c.

Q Mr. Lamborn said he got them from the Cadiz store at 20c. You never bought any out there?

A I never was there to obtain any, no.

Q Did you know Mr. Lamborn before you came to Jeanette yesterday?

A I met him as we were getting ready to go.

Q That is the first you ever saw him?

A Yes, to recognize him. That is the first time we met.

Q Do you have any occupation other than that of being a minister?

A No. I am going to school.

Q Where did you go to school?

A At Aliquippa High.

Q What is your age?

A I am eighteen.

Q And you have been a minister for approximately a year?

A I don't know now; practically almost four or five years.

Q Do you have to have a card before you could obtain any of these books?

A What kind of card are you referring to?

Q An identification card.

A No. I get my identification card afterwards, when I obtain and present to the people. That is when I get it.

Q Who did you get that from?

A I received it from the company.

Q In Aliquippa?

A In Ambridge.

Q And when you got some books there you got that card?

A Not exactly. I don't get a card every time I get books, but I get a card to present my books, to present them to the people, and to serve as identification in case of disturbance.

MR. TRESCHER: I think that is all.

The Court:

Q How many different kinds of cards do you have?

A Well, it just depends. Sometimes we get a card for the latest publication out and we receive our different cards. This card here (indicating) is for the Salvation book, and then we had a card—

Q That is the card that says 25c?

A Yes.

Q Some of them have 10c on.

A It depends on what they are presenting, yes.

Q This young lady over here said in response to her question as to how much this book was you said 25c, is that correct?

A Well, I didn't say it. I did say 25c, but I did make it plain that was only to help to defray the cost of publishing and it wasn't to help me.

Q You don't give these bound volumes away, do you?

A No, I didn't.

THE COURT: That is all.

REDIRECT EXAMINATION

Mr. Hessler:

Q Mr. Murdock, are you an ordained minister?

A Yes, I am.

Q How do you become ordained?

A Well, reading from Isaiah 61: 1, 2, which reads, "The spirit of the Lord is upon me, because the Lord has anointed me to preach good tidings unto the meek; He hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn." And also here in Isaiah, the 43rd chapter in the 11th and 12th verses which read, "I, even I, am the Lord, and besides me there is no saviour. I have declared, and have saved, and I have showed, when there was no strange god among you; therefore ye are my witnesses, saith the Lord, that I am God."

Q Are there any other Scriptures there that are given to you as a Christian,—in the first place are you a Christian?

A Yes, because I follow the teachings of Christ Jesus. Christ says, "If you love me keep my commandments," and to the best of my ability I am striving to keep the Lord's commandments.

Q What are some of those commandments?

A The main ones which he gave to his apostles is found

in Isaiah, 24th chapter, 14th verse, which reads, "And this Gospel of the Kingdom shall be preached in all the world for a witness unto all the nations, and then shall the end come."

Q Where is that found?

A In Matthew, the 24th chapter, the 14th verse.

Q It is not in Isaiah?

A No, pardon me, in Matthew. And then the method which I preach is by going from door to door, which is found in Mark, 6th chapter, 6th verse, which reads, "And He marveled because of their unbelief and he went around about the villages teaching." And also in Acts 20: 20,—and a follower of Christ Jesus was the Apostle Paul, he was a Christian also and he engaged in preaching from house to house,—and in Acts 20: 20 it reads, "And how I kept back nothing that was profitable unto you, but showed you and have taught you publicly and from house to house." And these Scriptures here together with many others prove that Christ and his true followers, the Christians, are engaged in house to house witnessing; that is, that obligation is laid on everyone who wants to be a true Christian by preaching the Gospel of Jehovah God's Kingdom and Christ Jesus His King.

Q You were not surprised, were you, when you were arrested for going around?

A No, I wasn't surprised, because the Bible states Christ Jesus when He was on earth, He said, "If you love me keep my commandments." He says, "I am not of this world therefore," and He said also that the servant is no greater than the master and He is our Master, so therefore He was persecuted and crucified by religionists because He was engaged in door to door witnessing and preaching the Gospel throughout the temples. So he says, "If you love the world, the world will love their own, but since you are not of the world and I have chosen you out of the world, the world will hate you." For that reason, if we are persecuted such as the Apostles were or thrown into prison, or whatever may be the outcome of it, we maintain our faithfulness.

Q What would happen to you if you didn't go from house to house with the Message of the Kingdom?

A One Scripture which I am not familiar with,—I am familiar with the Scripture but not the exact place, says, "Woe unto me if I preach not the Gospel." So therefore if I have a knowledge of the truth of God's Message of His Theocracy and refuse to preach it, that would mean destruction to me the same as to the religionists.

Q You said you were from the Ambridge Company of Jehovah's Witnesses and you pay a quarter for this book?

A Yes.

Q Now the Ambridge Company, do they meet in a hall regularly?

A Yes, about three times a week, besides other foreign studies.

Q They have certain expenses there, do they not?

A Yes, they do.

Q How do they meet those expenses?

A Well, by means of contributions, voluntary contributions by friends who have an interest in the work and who desire to advance the Kingdom interests.

Q And those who are associated with your Ambridge Company voluntarily contribute the difference between 20c and 25c in order to help defray those local expenses?

A Yes, that is what it is.

Q Did you ever give any books or booklets away?

A Yes, I have given quite a number of them, but not last Sunday.

Q Who do you give them away to?

A To anyone that is of good will and who shows interest enough and promises to read them and are unable to contribute for them; I am willing to give them away to them, because this message is for all persons of good will, and millions of persons of good will throughout the earth are unable and are poor and are unable to contribute, and we realize that and try to make it convenient so they can have a chance to receive it at our expense.

MR. HESSLER: That is all.

The Court:

Q Do you give those bound volumes away?

A I have given away a few of them but not many because I can't really afford it, but I do lend them out.

Mr. Trescher:

Q In other words, your religion teaches you that you are not bound by any laws that men make?

A Pardon me, but I don't have any religion.

Q Oh, you don't?

A No. We as Christians take a definite stand, which is as a Christian, which identifies us from a religionist.

Q And makes you superior to the laws, is that it?

A No, we are not superior to the laws.

Q You are not bound by them?

A Yes, we are bound by them, as long as they don't conflict with God's law.

Q And when they conflict the man-made laws must give way?

A When they conflict it is to our advantage to be faithful to the Most High, that is Jehovah.

MR. TRESCHER: That is all.

Mr. Hessler:

Q You obey all righteous laws, do you not?

A Yes, as long as they don't conflict with God's laws. For instance, those things such as driving, if I have to have a license, I wouldn't try to drive without a license because that doesn't conflict with God's laws.

Q Why didn't you come in and get a permit yesterday?

A For me to apply for a permit from imperfect man created by Jehovah God to preach His Gospel would be an insult to His name.

Mr. Trescher:

Q But you do get a license to drive your car over to preach His Gospel and yet you don't need a license to sell books?

A If you want to put it that way, yes.

Q You draw the line. It is all right to have a license to drive the car to the point of destination where you are going to distribute the book?

A Yes.

Q But when you wish to sell the books you don't need a license for them?

A Pardon me; if you would put it contribute or placing them I would understand you better.

Q On the same theory you don't buy the books, either, you merely make a contribution when you buy the books?

A Yes. If my condition is I am unable to contribute for them I would be able to get them free of cost.

Q But any time you have gotten them from the stock of the company you have either paid for them or been charged with the amount of the contribution and then later paid that?

A Yes.

Mr. Hessler:

Q Your understanding of applying for a permit or license to drive a car is that it is in no manner in conflict with the laws of Almighty God?

A It is not.

Q And the requirements to get a permit to go from house to house to preach the Gospel is a violation of the command of Almighty God?

A Yes, because that is a Theocratic law and that was given by Christ Jesus, who is a Son of Jehovah God and His anointed King. So therefore we receive the command from high to engage in preaching the Gospel, and to ask imperfect man for a permit would be an insult to the Most High.

Mr. Trescher:

Q Suppose you were driving your car in a country community from house to house, would you need a driver's license to preach the Gospel?

A To drive?

Q Yes.

A Yes.

(At this point a recess of five minutes was declared)

(After Recess)

CHARLES SEDERS, one of the defendants, called as a witness in his own behalf and on behalf of his co-defendants, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Hessler:

Q Mr. Seders, where do you live?

A I live at Weirton, West Virginia.

Q What is your occupation?

A My occupation is an ordained minister of the Gospel, and preaching the Gospel; I go about from house to house preaching the Gospel as Christ Jesus did, as he stated in the Scriptures, preaching the Gospel of God's Kingdom, and I came all the way from West Virginia for I thought I might comfort some of those that is in distress and some of them that mourn and cry for the abomination that is done in Christendom, and I received a kind welcome by landing in jail.

Q Just how do you present this information?

A I use the phonograph, just like all the brothers.

Q Well, you won't have to play that again. Did you play the phonograph yesterday?

A Yes, I started the phonograph record at many homes; not so many, but say eight or ten, and calls were sent in. This fellow that left here, he took a book from me.

Q You mean that Mr. Detruf?

A Yes.

Q What happened when you called at his house?

A I called at his house; his brother, as he stated, answered the door and said he wasn't interested, so I left and went to the next house and I was knocking on the door and he came out of his house, Mr. Detruf, and called to me and asked if I had any books. I said yes. He says, "Can I see one?" I said yes, and I started back to him and met him on the steps and I showed him the Salvation book, which he took from me,—this is one of them right here, the Salvation book,—and I begin to explain to him, I told him there was more than one hundred and fifty different prophetic pictures in this book foretelling all this trouble which is about to befall the world, and I also explained to him in the days of Noah, Noah preached for 120 years of the flood that was coming that was going to destroy the world and the people didn't believe him, like the people today don't believe Jehovah's Witnesses. That is a prophetic picture of Jehovah God, for our learning and understanding upon whom the end of the world shall come. And he says, "I will take the book," and he reached in his pocket and gave me a quarter and I went on to the next house. I started up the street, the same way, in the same manner, and we didn't get to play the record all the way through at any homes. We come to the corner when we finished and started out on another street, worked two or three homes, we came to the last house and was knocking on the door when we saw the cops coming down the hill,—this gentleman right over here, Mr. Kramer, and the other one is not in here, and he came over to the door while we was waiting for the answer and put his hand out on Mr. Mowder and says, "Come on, boys." I said, "Are we under arrest?" He said, "Yes, sir," and put us in the car and brought us down to the police station.

Q Did you have your credential card?

A Yes, sir. (Witness produces card.) My identification card "To Whom It May Concern—"

THE COURT: We don't want that read into the record.

MR. HESSLER: I will just offer that in evidence.

Mr. Hessler:

Q Which one were you using?

A This is the one to read at the door.

Q Has that the same reading on the back?

A No, it has different reading on the back, but I used this for my name and address. They are on all of them.

Q This is the one you were using (indicating)?

A Yes.

(Mr. Hessler lays the card just identified by the witness on the Court's desk.)

Q Now, Mr. Seders, did you give any literature away yesterday?

A I can't say I gave any away in Jeannette. I gave the one with the Salvation away, Government and Peace; I gave it with the Salvation on a contribution of 25c, and that is all the literature I placed while I was over there.

MR. HESSLER: That is all.

CROSS EXAMINATION

Mr. Trescher:

Q Do you own your phonograph?

A Yes.

Q Who did you buy it from?

A I received it through our Weirton Company of Jehovah's Witnesses direct from the Watch Tower Bible and Tract Society.

Q Did you pay anything for it?

A Yes.

Q How much did you pay?

A Eight dollars.

Q How much did you pay for the books you were carrying yesterday?

A Well, I was carrying yesterday one Salvation and one

Government book,—that is a bound volume,—and I was carrying the Enemies book, and we pay a 25c contribution for each.

Q And you pay that contribution to the Weirton store?

A Yes, I contribute there.

Q And you receive no books unless you do contribute?

A Well, in a case like that, if I don't have the money I do.

Q Do you mean they charge the contribution?

A Yes.

Q And you pay it later?

A Yes.

Q And you give no books unless you get a similar contribution from the person who is taking it?

A Yes, I give away many books. For instance, last month I have placed a total of 37 bound books and I haven't received a contribution for over I will say near half of them.

Q You seem to have a number of these identification cards certifying that you are an ordained minister. From whom do you obtain those cards?

A From the society.

Q Do you get them when you obtain the books?

A Well, yes, we get them before we obtain the books.

Q They are not dated?

A No.

Q You have about a half dozen of them in your pocket?

A I have three I believe.

Q And they bear only the printed signature of one J. T. Rutherford?

A Yes.

Q President of the Watch Tower Bible and Tract Society?

A Yes.

Q Do you have any occupation other than that of being an ordained minister?

A Yes.

Q What is your occupation?

A My occupation is a tin mill worker.

Q How long have you lived in Weirton, West Virginia?

A It will be ten years in May.

Q How long have you been a minister?

A I will say I have been consecrated to the Lord for the last four years.

Q And you say your other occupation is what?

A Tin mill worker.

Q You have been a tin mill worker for how long?

A Ten years in July.

Q Prior to that what did you do?

A Well, I was a kid—you might say then, going to school.

Q Where were you living at that time?

A You mean before?

Q Before you went to work.

A Clarksburg, West Virginia.

Q And did you come to Braddock before you came to Jeannette yesterday?

A Yes, sir.

Q Who sent you to Jeannette?

A I came of my own accord to Jeannette.

Q Did anybody assign you any territory?

A Yes.

Q Who did that?

A I don't know his name either.

Q What is his official position in the society?

A In the society his official position would be a Territory Director or a Servant,—Territory Servant.

Q Did anyone come with you to Jeannette?

A Yes, Mr. Mowder.

Q And were you driving a machine?

A No.

Q Was he driving it?

A No.

Q Mr. Mowder?

A No.

Q Was there someone else driving it?

A Somebody else, yes.

Q Who was that?

A Another brother.

Q Do you know his name?

A I couldn't say exactly, no, what his name is.

Q Just met him in McKeesport, or Braddock rather?

A Yes, I met him in Braddock.

MR. TRESCHER: That is all.

The Court:

Q What time did you come to Jeannette?

A To Jeannette?

Q Yes.

A I arrived here around five o'clock, 4:30 or 5:00 o'clock.

Q You knew that some of your members had been arrested in Jeannette before you got here?

A I heard about the two sisters being arrested.

Q You heard that in Braddock?

A Yes.

Q Then you expected to be arrested when you came here?

A Well, I didn't know. I come,—I thought maybe that it would happen, but it didn't make no difference to me.

Q Did you know that there had been a similar case to this in Jeannette before?

A I didn't know that, no.

Q You didn't know that?

A No.

Q Didn't know that there was a case pending in the court?

A I knew that after I had been arrested.

Q These various cards that you have with you, you use different cards depending upon the type of book that

you are distributing on that particular day?

A That's right.

Q Those cards have a different amount of contribution that is expected for different kinds of books?

A That's right.

THE COURT: That is all.

REDIRECT EXAMINATION

Mr. Hessler:

Q Did you work any place else yesterday?

A Yesterday?

Q Yes.

A I worked in Braddock yesterday morning.

Q Were you arrested?

A No.

Q Is this the only Sunday you have worked?

A No. I go out every Sunday that I get a chance. If I am not working in the mill I go out.

Q Have you been arrested other places?

A Never was before.

Q Do you use the same method?

A The same method.

MR. HESSLER: That is all.

WILLARD L. MOWDER, one of the defendants, called as a witness in his own behalf and on behalf of his co-defendants, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Hessler:

Q Mr. Mowder, where do you live?

A Virginville, West Virginia.

Q What is your occupation, Mr. Mowder?

A None at all.

Q Why did you come to Jeannette yesterday?

A My main reason was I wanted to get in some kind of work that I learned that Jehovah at sometime or another would make this world a different world, and I like this kind of work very much. That is my reason for coming.

Q You came along with Mr. Seders to see how he acted as a Christian, is that right?

A Yes.

Q And you have a desire to become a Christian?

A Yes.

Q You have a desire to live on this earth and serve Almighty God?

A That's right.

Q In a manner that will be acceptable to Him?

A Yes, sir.

Q And that was your reason for coming with Mr. Seders yesterday?

A Yes, sir.

THE COURT: Are those leading questions?

Mr. Hessler:

Q Were you ever arrested in this work before?

A No, sir.

Q Did you work any place else with Mr. Seders yesterday?

A No, sir.

MR. HESSLER: That is all.

CROSS EXAMINATION

Mr. Trescher:

Q Are you an ordained minister?

A No, sir.

Q Is this the first time you were ever engaged in this work?

A I have been out in the country, but this is my first time in the city.

Q And on those occasions were you distributing books as well?

A No, sir, we were just playing the phonograph.

Q Did you accept any contributions on those occasions?

A No, sir.

Q You are only eighteen years old now?

A That's right.

Q And you had never been out in any towns before?

A No, sir.

Q Did you know before you came here that some people had been arrested yesterday?

A No, sir.

Q You hadn't learned that before you left Braddock?

A No.

Q Were your parents with you at Braddock?

A No.

Q How did you come from Virginville, West Virginia, to Braddock?

A By bus.

Q Did you come with anyone?

A There was a bus load that was chartered.

Q How many people were in that bus?

A Well, I don't know.

Q Any other members of your family?

A No, sir.

Q You didn't have a victrola and didn't have any books?

A I was just carrying books for Brother Seders here.

Q You say you didn't know that anybody had been arrested?

A No, sir.

Q Are you in school now?

A No, sir.

Q Did anyone tell you that the ordinances of the city require a permit to engage in work of that kind?

A No, sir.

Q They did not?

A No, sir.

MR. TRESCHER: That is all.

REDIRECT EXAMINATION

Mr. Hessler:

Q Did anyone tell you that you didn't need a permit to do this kind of work?

A I never heard of it.

RECROSS EXAMINATION

Mr. Trescher:

Q You didn't accept any money?

A No, sir.

Q Did you hand out the book?

A No, sir.

Q Do you know who else came to Jeannette in the same machine you rode in?

A No, sir.

Q Did anyone other than you and Mr. Seders?

A There was Mr. Seders and a man and a woman.

Q You don't know who the man and the woman were?

A No, sir.

Q Do you know how many Witnesses altogether came to Jeannette yesterday?

A No, I don't.

Q Have you any idea?

A No, sir.

Q Had you solicited any in Braddock before you left there?

A Yes, sir.

Q Who were you with there?

A A sister from Weirton.

Q Your own blood sister?

A No, sir.

Q A member of the Watch Tower Society?

A A member of the Watch Tower Society.

MR. TRESCHER: I think that is all.

The Court:

Q This boy Detruf testified that you carried the satchel and you opened the satchel and handed out the book and he gave the money to Mr. Seders, is that correct?

A No, sir, it is not. I never even touched the book.

Q Were you carrying the satchel?

A Yes, sir.

Q Did you go to Detruf's house with Mr. Seders?

A Yes, sir.

Q You carried the satchel there?

A Yes, sir.

Q Did you engage in the conversation at all?

A I didn't say a word.

Q Who did open the satchel?

A Brother Seders.

THE COURT: That is all.

EARL V. SINGER, a witness called and produced on behalf of the defendants, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Hessler:

Q What is your full name, Mr. Singer?

A Earl V. Singer.

Q Where do you live?

A East Liverpool, Ohio.

Q What is your occupation?

A I am an ordained minister of Almighty God.

Q Why did you come to Braddock yesterday?

A I came to Braddock to honor the name of Almighty God, to aid people of good will to learn of His purposes, so that they might be the recipients of His blessings.

Q What was going on at Braddock yesterday?

A The Zone No. 9 of Jehovah's Witnesses held an assembly at Braddock.

Q How many were there?

A Oh, approximately a thousand I would say.

Q What was the purpose of their assembling there?

A For the same purpose as I came there.

Q And what was that?

A To honor the name of Almighty God and to take to the people of good will a message of His Kingdom, that they too might become the recipients of His blessings.

Q What communities did you cover yesterday?

A Myself personally?

Q No, the Jehovah's Witnesses.

A We covered Braddock, Homestead, Jeannette, Pittsburgh and others; I just can't name all of them.

Q How many about came to Jeannette?

A One hundred and four.

Q What was the purpose of their coming here?

A To honor the name of Almighty God, to preach the Gospel of His Kingdom to people of good will, that they too might get a knowledge of His purposes and become the recipients of His blessings.

Q Why do Jehovah's Witnesses accept a contribution for literature?

A Jehovah's witnesses accept a contribution for the Watch Tower Bible and Tract Society publications because it aids in the publishing of more books to put in the hands of more truth-hungry persons who are languishing in the prison houses of religious organizations.

Q The statement was made that one of these defendants stated they paid 20c for books and another one said 25c. Why is that?

A The Watch Tower publishes the bound book publications and dispatches them to various companies throughout the entire world, and there is a set contribution on the publication of 20c to companies. In some companies they set up their own,—in the various companies they set up their own various rules and regulations. For instance, in the company I am associated with the company publishers contribute 25c

for the bound book publications. The reason for that is that we have many expenses in connection with our work; we have halls where we assemble for the purpose of studying God's word and invite people of good will to come and assemble with us and it takes money to run; and that difference that is received, the difference between what is received and paid by the company, that is used to defray those expenses, to whatever extent it will cover it: Then other contributions are voluntarily given by the various workers and companies to make up the deficit.

MR. HESSLER: That is all.

CROSS EXAMINATION

Mr. Treseher:

Q Where do you live, Mr. Singer.

A East Liverpool, Ohio.

Q How do you make a living?

A I am in the trucking business.

Q How many days in the week do you engage in the trucking business?

A At the present none.

Q How long has it been since you have not worked at the trucking business?

A Since January 1st, 1939.

Q Do you have any trucks?

A Yes, sir.

Q Do you have an automobile?

A Yes, sir.

Q Do you have a home?

A Yes, sir.

Q Do you have a bank account?

A Yes, sir.

Q For a little better than a year you have not worked at your regular employment, is that correct?

A Other than, just as we say, keeping a weather eye on the business.

Q By that you mean you have other people in your employ who do the work?

A Yes, sir.

Q And you devote your time to the business of being a minister is that right?

A I devote my time to the work of honoring the name of my God and preaching the Gospel of His Kingdom.

Q Do you go about from door to door or do you direct the activities of the others?

A I go from door to door, just the same as my brothers.

Q You were in Braddock yesterday?

A Yes, sir.

Q Were you there the day before?

A Yes, sir.

Q How long before that had you—

A Pardon me, I will retract that. I was in Pittsburgh the day before. We had an assembly in Pittsburgh the day before. I wasn't in Braddock.

Q How many attended the assembly in Pittsburgh?

A One hundred and sixty-eight.

Q How many the assembly in Braddock?

A Approximately 1000.

Q Did this same group who attended in Pittsburgh on Saturday attend in Braddock on Sunday?

A Well, speaking of that in a general way, I would say yes. I couldn't say as to individuals.

Q Do you have any official position with the society?

A I am an assistant Zone Servant.

Q Do you allot territories to these persons who go out and solicit?

A I have nothing to do with that.

Q Who takes care of that?

A That is done directly through Brooklyn, New York, headquarters.

Q Do you mean to say they know who is going to attend these assemblies and map out the territories?

A They allot the territories to the companies and the

companies have various Servants that hand it out to the individual publishers.

Q Did you have anything to do with mapping out the territories yesterday?

A No, sir.

Q Do you know who did?

A I do.

Q Who?

A Mr. Poor. He is the Territorial Servant.

Q Do you obtain books or tracts from any particular company?

A I obtain my publications direct from headquarters.

Q Do you mean by that you buy directly from New York?

A Brooklyn, yes.

Q Brooklyn, New York?

A Yes.

Q How much do you pay for books?

A You mean the bound books?

Q Yes.

A Our society has set up a system of allowing those people who devote all their time to the work of proclaiming the Kingdom Message, of giving these bound books to them on a contribution of 5c. We take them out and place them with the people,—on the contribution set by the society. That enables those who are preaching the Gospel of God's Kingdom to buy a bite to eat once in awhile.

Q Exactly. So that that book costs you how much?

A That costs me—

Q Five cents?

A If I would get one from the society it would cost me 5c.

Q And when you in turn turn those books over to other solicitors do you charge as much as 20c for it?

A I am not permitted to do that.

Q Do you not have charge of what they call a company?

A No, sir. The only way that that is done,—in other

words, I cannot be a distributor other than going door to door with the publications, that is people who are not associated with the organization.

Q And when you go from door to door the contribution that you expect is 25c?

A The society sets that contribution, yes, sir.

Q Sets that contribution?

A That's right. It is a fund of our society set aside to aid those who give all their time to the Lord's work.

Q And you have been giving all your time for the past year and a quarter anyway?

A Yes, sir.

Q And for that you get the special contribution rate of 5c, and when you exact contributions of the persons who take the books from you, the rate is the standard rate of 25c, is that right?

A I have an automobile, that takes gasoline; I eat. That money I use to eat I get from my business, and not only that but I give many of the bound book publications to the Lord's poor who cannot afford to contribute and get the life-sustaining truths of Almighty God. But in the long run I give more than I receive.

Q And by the prisons of other religions you of course refer to churches?

A Religious organizations, yes, sir.

Q That is, when you say that certain persons are languishing in the prisons of religious organizations you mean that they are members of some church?

A That's right,—not of some church. There is one true church.

Q That is your own?

A No, that is Christ's Church. He is the Head. It is the church of the living God according to Scriptures.

Q And you regard yourself as a member of that religion?

A I regard myself as a member of that church.

MR. TRESCHER: That is all.

DEFENDANTS REST

TESTIMONY CLOSED

MR. HESSLER: Now at this time we would like to state that the testimony of the other defendants is similar to that which has already been given, and on behalf of all the defendants we would like to make the following motion.

The defendants move to dismiss this case and for their discharge upon the following grounds:

That the complaint is invalid and does not state facts sufficient to constitute an offense under the law.

That the ordinance in question is in direct conflict with the Constitution of this State and of the United States, in this: that it restricts the freedom of speech, freedom of press, and freedom of worship of Almighty God.

That the ordinance in question is in direct violation of the Fourteenth Amendment of the Constitution of the United States.

That the evidence by prosecution shows defendants are not guilty.

The defendants therefore pray this Court to dismiss this case and that they be discharged.

I make that motion on behalf of the eight defendants. I will leave with you a copy of the motion.

(Mr. Hessler hands to the Court a copy of the motion just made in each individual case.)

The defendants move to dismiss this case and discharge the defendants on the following grounds:

That upon all the evidence in this case and the law governing the same the prosecution has failed to introduce any evidence whatsoever showing the guilt of the defendants;

That upon all the evidence offered and the law in the case the defendants are not guilty and should be discharged.

THE COURT: The ordinance under which these defendants are prosecuted is the hawking and vending ordinance of the City of Jeannette, with which ordinance you are familiar, having previously been furnished a copy of this ordinance. You were also informed and notified that the officials of the City of Jeannette did not object to your distribution of literature and pamphlets so long as you did so free of charge and made no charge for the pamphlets and periodicals which you distributed, but we do object to your violating this ordinance when you sell and solicit contributions for the publications of the Watch Tower people without a license or a permit.

This Irvington case is distinguished by us in this; quoting from the Irvington case it says: "The ordinance in question," that is the Irvington ordinance, "is not limited to those who canvass for private profit; nor is it merely the common type of ordinance requiring some form of registration or license of hawkers, or peddlers."

Our position is that we are still within the constitutional privilege of licensing hawking and peddling and vending and soliciting, and therefore I find the defendants guilty under the evidence and assess them each with a fine of \$50.00 or 30 days in prison.

MR. HESSLER: Could we ask you now for the number of the ordinance? Is it No. 60?

THE COURT: Yes, that is the ordinance, Ordinance No. 60.

MR. HESSLER: We would like to have this victrola marked as part of the record and as part of the evidence, this record P-204 entitled Snare and Racket by Judge Rutherford.

THE COURT: That will all be made part of the record.

MR. HESSLER: We would like to have bail continued. We have bondsmen here.

THE COURT: Put up a bond pending the five day allowance.

MR. HESSLER: We would like to request at this time a certified copy of the ordinance and we would like to have a certified copy of the transcript.

THE COURT: We will get that for you in due time after you perfect your appeal.

MR. HESSLER: We would like to have it before the time of the appeal, in making the appeal, that is a copy of the transcript. We would like to have a copy of the information.

THE COURT: All right, we will try to have it for you within the five day period.

MR. HESSLER: And will you give me a certified copy of the ordinance now?

THE COURT: Yes, the clerk will certify the ordinance.

THE CITY CLERK: Not tonight. I have not got the seal here. I will send it to you. What is your address?

MR. HESSLER: 907 Middle Street, Pittsburgh.

I hereby certify that the proceedings and evidence are contained fully and accurately in the stenographic notes taken by me at the foregoing hearing and that this copy is a correct transcript of the same.

(signed) JAMES SHAUGHNESSY
Official Reporter,
County Court,
Pittsburgh, Pennsylvania.

MEMORANDUM OPINION

**SUR RULE 58 OF THE RULES OF
THE SUPERIOR COURT**

No. 192

**IN THE COURT OF QUARTER SESSIONS
WESTMORELAND COUNTY
FEBRUARY 1940 TERM**

**COMMONWEALTH OF PENNSYLVANIA
City of Jeannette**

v.

**ELLAINE TZANES and ANASTASIA TZANES,
Defendants**

March 16, 1942

GORDON, JR.

The appeal in this case was based upon the alleged unconstitutionality of an ordinance of the City of Jeannette requiring the licensing of peddlers and street vendors. The validity of the same ordinance under the Constitution of the United States was involved in the case of *Stewart vs. Commonwealth of Pennsylvania (City of Jeannette)*, 309 U. S. 674, in which the Supreme Court of the United States re-

refused an appeal on March 25, 1940. The constitutionality of a similar ordinance under our State Constitution was also decided by the Superior Court in the case of Pittsburgh vs. Ruffner, 134 Pa. Sup. 192. The questions sought to be raised by the appellants here are, therefore, no longer disputable, and it was for this reason that we refused the appeal.

BY THE COURT:

JAMES GAY GORDON, JR. (Sgd)

President Judge,

Court of Common Pleas No. 2

First Judicial District,

Specially Presiding:

ORDER

[Same caption and title as on foregoing
MEMORANDUM OPINION as to No. 192]

2-20-42 APPEAL REFUSED.

J. G. GORDON, JR.

President Judge,

Court of Common Pleas No. 2,

Philadelphia, Specially Presiding.

MEMORANDUM OPINION

**SUR RULE 58 OF THE RULES OF
THE SUPERIOR COURT**

No. 193

**IN THE COURT OF QUARTER SESSIONS
WESTMORELAND COUNTY
FEBRUARY 1940 TERM**

**COMMONWEALTH OF PENNSYLVANIA
City of Jeannette**

v.

**ANTHONY MALTEZOS, ANNA PERISICH,
ROBERT LAMBORN, ROBERT MURDOCK, JR.,
CHARLES SEDERS & WILLARD L. MOWDER**

March 16, 1942

GORDON, JR.

We refused the appeal in this case for the reasons stated in the memorandum opinion filed by us in the case of Commonwealth of Pennsylvania (City of Jeannette) vs Ellaine Tzanes and Anastasia Tzanes; February Term, 1940, No. 192.

BY THE COURT:

**JAMES GAY GORDON, JR. (Sgd)
President Judge,
Court of Common Pleas No. 2,
First Judicial District,
Specially Presiding.**

ORDER

[Same caption and title as on foregoing
MEMORANDUM OPINION as to No. 193]

2-20-42 APPEAL REFUSED

J. G. GORDON, JR.
President Judge,
Court of Common Pleas No. 2,
Philadelphia, Specially Presiding.

[fol. 113]

ASSIGNMENTS OF ERROR

First

The court below committed reversible error and abused its discretion in refusing to grant each appellant's petition for appeal from said 'summary conviction' because it plainly appears that the ordinance does not apply to their activity of preaching the gospel as described in the evidence and petition for appeal; therefore Jeannette ordinance No. 60 has been construed and applied so as to deny and deprive each appellant of his freedom to worship ALMIGHTY GOD as by Him commanded in the Bible and according to appellant's conscience, all contrary to the Constitution of the Commonwealth and to Section 1 of the Fourteenth Amendment to the United States Constitution.

(Petition for appeal in No. 192, grounds fourth, eighth and ninth, R. pp. 5a, 6a)

(Order of Court, R. p. 110a:)

"2-20-42. Appeal Refused. J. G. Gordon, Jr., President Judge, Court of Common Pleas No. 2, Philadelphia, Specially Presiding."

(Petition for appeal in No. 193, grounds fourth, eighth and ninth, R. pp. 17a, 18a)

(Order of Court, R. p. 112a:)

"2-20-42. Appeal Refused. J. G. Gordon, Jr., President Judge, Court of Common Pleas No. 2, Philadelphia, Specially Presiding."

Second

The court below committed reversible error and abused its discretion in refusing to grant each appellant's petition for appeal from said 'summary conviction' because it plainly appears that they were engaged in press activity [fol. 114] and therefore Jeannette ordinance No. 60 has been construed and applied so as to constitute a *direct burden* upon distribution and thus violate appellants' right of freedom of the press contrary to the Constitution of the Commonwealth and to Section 1 of the Fourteenth Amendment to the United States Constitution.

(Petition for appeal in No. 192, grounds fourth, eighth and ninth, R. pp. 5a, 6a)

(Order of Court, R. p. 110a:)

"2-20-42. Appeal Refused. J. G. Gordon, Jr., President Judge, Court of Common Pleas No. 2, Philadelphia, Specially Presiding."

(Petition for appeal in No. 193, grounds fourth, eighth and ninth, R. pp. 17a, 18a)

(Order of Court, R. p. 112a:)

"2-20-42. Appeal Refused. J. G. Gordon, Jr., President Judge, Court of Common Pleas No. 2, Philadelphia, Specially Presiding."

(The above assignments of error were filed in the case of Commonwealth v. Murdock, No. 1, April Term, 1943, and like assignments of error were filed in the other seven (7) appeals set forth on the cover of this Record.)

[fol. 115] IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 346

COMMONWEALTH OF PENNSYLVANIA

v.

ROBERT MURDOCK, JR., Appellant.

No. 1 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ANNA PERISICH, Appellant.

No. 2 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

WILLARD L. MOWDER, Appellant.

No. 3 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

CHARLES SEDERS, Appellant.

No. 4 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ROBERT LAMBORN, Appellant.

No. 5 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ANTHONY MALTEZOS, Appellant.

No. 6 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ANASTASIA TZANES, Appellant.

No. 7 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ELAINE TZANES, Appellant

No. 8 April Term, 1943

Appeals by defendants from the orders of the Court of Quarter Sessions of Westmoreland County, to Nos. 193 and 192 February Term 1940, respectively.

No. 346

Opinion by Keller, P. J.

[Filed July 23, 1942]

These eight appeals were taken from orders of the Court [fol. 116] of Quarter Sessions of Westmoreland County refusing to allow appeals from judgments and sentences imposed by the mayor of the City of Jeannette on summary

convictions for violations of ordinance No. 60 of said city, duly enacted March 21, 1898. This ordinance forbids the sale of goods, wares, and merchandise of any kind within said city, by canvassing or soliciting, unless the person so canvassing or soliciting has first procured a license to transact said business, and paid the license fee required.¹

The Constitution of Pennsylvania (Art. V, sec. 14) provides for an appeal in cases of summary conviction "to such court of record as may be prescribed by law, *upon allowance of the appellate court or judge thereof upon cause shown*". (Italics ours) In carrying this provision of the Constitution into effect, the General Assembly passed the Act of April 17, 1876, P. L. 29, which authorized appeals from summary convictions to the *court of quarter sessions* of the county in which the magistrate, etc., resided, within five days, *upon allowance by said court or any judge thereof, upon cause shown*.

Under our law, therefore, an appeal does not lie from a judgment on summary conviction, as of course. The appellant must first show cause for the appeal to a judge of the court of quarter sessions² and secure his *allowance* of the appeal.

These appellants were arrested on complaints charging them with having violated said ordinance in unlawfully soliciting the sale of, and in selling, certain books and pamphlets, from door to door, in the City of Jeannette, without obtaining a license, as provided in said ordinance. A hearing was had before the mayor of the city and notes of the testimony at the hearing were taken in shorthand and transcribed. They form part of the record considered by the court below and sent up on appeal.

The testimony establishes that all of the defendants—these appellants—went about from door to door in the City of Jeannette soliciting people in their homes, etc., to purchase, and selling, two books entitled 'Salvation' and 'Creation' respectively, and certain leaflets or pamphlets, all published by the Watch Tower Bible and Tract Society of Brooklyn, N. Y., for which the Society fixed twenty-five

¹ For one day, \$1.50; for one week, \$7; for two weeks, \$12; for three weeks, \$20.

² In Allegheny County, of the County Court. Act of May 5, 1911, P. L. 198, sec. 6(c).

cents each as the price for the books and five cents each as the price of the leaflets. Defendants paid twenty cents each for the books, unless they devoted their whole time to the work, in which case they paid five cents each for the books they sold at twenty-five cents. Some of the witnesses spoke of 'contributions' but the evidence justified a finding that they sold the books and pamphlets. As a preliminary to the sale, they brought with them a phonograph—which they [fol. 117] purchased from the Watch Tower Bible and Tract Society—on which they played a record, purchased from the same society, in which every other religion but their own was denounced as a 'snare and a racket'. The testimony of the defendants themselves warranted a finding that they had sold these books and pamphlets for money, and that they had not applied for or procured a license to do so as provided, by ordinance No. 60. Their defense was that they were members of a sect, calling themselves 'Jehovah's witnesses', and that it was against their religious convictions to apply for such a license, and that any prosecution against them for violating the provisions of the ordinance requiring such a license was an infringement of their rights under the Constitution of the United States and the Constitution of Pennsylvania, and a restriction of the rights of freedom of worship, freedom of speech, and freedom of the press, secured to them by said Constitutions, and in direct violation of the 14th Amendment to the Constitution of the United States.

After a full hearing, covering eighty printed pages of testimony, the Mayor found all of the defendants guilty and imposed upon each of them a fine within the limit fixed by the ordinance, in default of payment of which they would be committed to the county prison.

Within five days they applied by petition to the court of quarter sessions for an appeal, which was refused by Judge Gordon, President Judge of Common Pleas No. 2 of Philadelphia County, specially presiding, his reasons therefor being set forth as follows: "The appeal in this case was based upon the alleged unconstitutionality of an ordinance of the City of Jeannette requiring the licensing of peddlers and street vendors. The validity of the same ordinance under the Constitution of the United States was involved in the case of *Stewart vs. Commonwealth of Pennsylvania (City of Jeannette)*, 309 U. S. 674 [petition for certiorari from the judgment of the Superior Court of Pennsylvania

In Com. v. Stewart, et al., 137 Pa. Superior Ct. 445, 9 A 2d 149. Appeal refused by Supreme Court of Pennsylvania, December 8, 1939, 137 Pa. Superior Ct. XXXIII, in which the Supreme Court of the United States refused an appeal on March 25, 1940. The constitutionality of a similar ordinance under our State Constitution was also decided by the Superior Court in the case of *Pittsburgh v. Ruffner*, 134 Pa. Superior Ct. 192, [4 A]2d 224. The questions sought to be raised by the appellants here are, therefore, no longer disputable, and it was for this reason that we refused the appeal.

The case of *Pittsburgh v. Ruffner*, 134 Pa. Superior Ct. 192, 4 A. 2d 224—appeal refused by the Supreme Court of Pennsylvania on March 17, 1939, 134 Pa. Superior Ct. XXXIII—was concerned with a somewhat similar ordinance of the City of Pittsburgh, in which the same constitutional defense was presented as in this case. On the argument of that case it developed that the appeal had not been taken within the time limited for appeals by our statute on the subject, and would have to be quashed. But counsel for the appellant—who was also a member of the Jehovah's witnesses sect—was so insistent in asking a decision on the merits, in order that it might govern the disposition of similar cases, that we complied with his request and fully discussed the case on its merits and ruled that such an ordinance, if nondiscriminatory and not unreasonable, was not in violation of the constitutional rights of freedom of worship and freedom of the press secured by our State Constitution and by the Federal Constitution as enlarged by the 14th Amendment.

We said, *inter alia*:

[1st 118] "I. The ordinance in question cannot, by any stretch of the imagination, be held to be directed against freedom of worship. It is concerned with hawking and peddling merchandise, and with selling merchandise from house to house and in buildings. It does not discriminate against non-residents, nor is it limited to any particular kind of merchandise. This appellant is perfectly free to worship God according to the dictates of his own conscience, separately or with his family and co-religionists, in his home or theirs, and in church, chapel, assembly or other gathering place. The constitutional right of freedom of worship does not guarantee anybody the right to

sell anything from house to house or in buildings, belonging to, or in the occupancy of, other persons.

"H. Nor does the ordinance unlawfully infringe upon the constitutional right of freedom of the press. This appellant may, notwithstanding this ordinance, freely print and communicate his thoughts and opinions and may *freely speak*, write and print on any subject, 'being responsible for the abuse of that liberty', and he may, subject to reasonable regulation, *freely distribute* the same, but that furnishes no warrant for upholding his *unlimited and unrestricted* right to enter the homes and offices of others to *sell* to them the books and pamphlets he may have written or books and pamphlets expressive of his thoughts and opinions." The case of *Loyell v. Griffin*, 303 U. S. 444, on which appellant relies, declares no such doctrine. * * *

"The present ordinance relates only to the hawking and peddling of merchandise and the *selling* of goods and merchandise from house to house, or in buildings within the City limits. * * * The ordinance is general and covers the sale of books and printed matter no less than other merchandise. Despite the earnest arguments of appellant's counsel we are not convinced that freedom of the press carries with it freedom from all regulation of sales of printed matter; we do not accede to his contention on the oral argument that the federal decisions relied upon by him go so far as to rule that the constitutional guaranty of a free press forbids dealers in books and printed matter being subjected to our State mercantile license tax or the federal income tax as to such sales, along with dealers in other merchandise."

"We have several times since approved the legal propositions enunciated in that case.³

Later, in *Com. v. Reid*, 144 Pa. Superior Ct. 569, 575, 20 A. 2d 841, we distinguished that case from *Pittsburgh v. Rutkner*, supra, and refused to uphold an ordinance of the Borough of Clearfield, when it was sought to be used to prevent members of Jehovah's witnesses from selling

³ See *Com. v. Stewart*, 137 Pa. Superior Ct. 445, 446, 9 A. 2d 179; *Com. v. Palms*, 141 Pa. Superior Ct. 430, 440, 15 A. 2d 481; *Com. v. Hessler*, 141 Pa. Superior Ct. 421, 15 A. 2d 486; *Com. v. Reid*, 144 Pa. Superior Ct. 569, 575-6, 20 A. 2d 841.

on the streets of the borough certain weekly publications of the Watch Tower Bible and Tract Society, known as 'The Watch Tower' and 'Consolation', publications somewhat along the lines of the Salvation Army's 'War Cry'.

Since the submission of the present case to this court, the Supreme Court of the United States has decided three cases, dealing with the same questions involved in the present appeals, to-wit, *Jones v. City of Opelika* (280 October Term 1941); *Bowden, et al. v. City of Fort Smith* (314 October Term 1941); and *Jobin v. State of Arizona* (366 October [fol. 119] Term 1941), reported in — U. S. —, [62] S. Ct. [1231].

The facts in the cases of *Bowden, et al. v. City of Fort Smith* and *Jobin v. State of Arizona* are so similar to those in the appeals before us, and the discussion of Mr. Justice Reed in holding that similar ordinances of the City of Fort Smith, Arkansas, and City of Casa Grande, Arizona, were not violative of the rights—whether of freedom of worship, freedom of speech, or freedom of the press—of the sectarians calling themselves 'Jehovah's witnesses', is so appropriate to our cases, that we need do little more than cite it as determinative of the federal constitutional questions raised by the appellants. Mr. Justice Reed said, *inter alia*, "There is to be noted, too, a distinction between nondiscriminatory regulation of operations which are incidental to the exercise of religion or the freedom of speech or the press and those which are imposed upon the religious rite itself or the unimixed dissemination of information. Casual reflection verifies the suggestion that both teachers and preachers need to receive support for themselves as well as alms and benefactions for charity and the spread of knowledge. But when, as in these cases, the practitioners of these noble callings choose to utilize the vending of their religious books and tracts as a source of funds; the financial aspects of their transactions need not be wholly disregarded. To subject any religious or didactic group to a reasonable fee for their money-making activities does not require a finding that the licensed acts are purely commercial. A book agent cannot escape a licensé requirement by a plea that it is a tax on knowledge. It would hardly be contended that the publication of newspapers is not subject to the usual government fiscal exactions, *Giragi v. Moore*, 301 U. S. 670; 48 Ariz. 33, 49 Ariz. 74, or the obligations placed by statutes on other business. *Associated Press v.*

Labor Board, 301 U. S. 103, 130 * * *. When proponents of religious or social theories use the ordinary commercial methods of sales of articles to raise propaganda funds, it is a natural and proper exercise of the power of the state to charge reasonable fees for the privilege of canvassing. Careful as we may and should be to protect the freedoms safeguarded by the Bill of Rights, it is difficult to see in such enactments a shadow of prohibition of the exercise of religion or of abridgement of the freedom of speech or the press. It is prohibition and unjustifiable abridgement which is interdicted, not taxation. Nor do we believe it can be fairly said that because such proper charges may be expanded into unjustifiable abridgements they are therefore invalid on their face. The freedoms claimed by those seeking relief here are guaranteed against abridgement by the Fourteenth Amendment. Its commands protect their rights. The legislative power of municipalities must yield when abridgement is shown. Compare *Grosjean v. American Press Co.*, 297 U. S. 233, with *Gragi v. Moore*, 301 U. S. 670. If we were to assume, as is here argued, that the licensed activities involve religious rites, a different question would be presented. These are not taxes on free will offerings. But it is because we view these sales as partaking more of commercial than religious or educational transactions that we find the ordinances, as here presented, valid * * *. In the ordinances of Casa Grande and Fort Smith, we have no discretionary power in the public authorities to refuse a license to any one desirous of selling religious literature. No censorship of the material which enters into the books or papers is authorized. No religious symbolism is involved such as was urged against the flag salute in *Minersville District v. Gobitis*, 310 U. S. 586. For us there is no occasion to apply here the principles taught by that opinion. Nothing more is asked from one group than from another which uses similar methods of propagation. We see nothing in the collection of a nondiscriminatory license fee, uncontested in amount, from those selling [fol. 120] books or papers, which abridges the freedoms of worship, speech or press. Cf. *Grosjean v. American Press Co.*, 297 U. S. 233, 250. As to the claim that even small license charges, if valid, will impose upon the itinerant colporteur a crushing aggregate, it is plain that if each single fee is, as we assume, commensurate with the activities licensed, then though the accumulation of fees from city to

city may in time bulk large, he will have enjoyed a comparatively enlarged field of distribution. Cf. *Coverdale v. Pipe Line Co.*, 303 U. S. 604, 612-613. The First Amendment does not require a subsidy in the form of fiscal exemption. *Giragi v. Moore*, *supra*. Accordingly the challenge to the Fort Smith and Casa Grande ordinances falls."

We think it proper to point out, however, that the ordinance here involved is forty-four years old. It was enacted long before co-religionists of these appellants assumed the name, 'Jehovah's witnesses,' or announced their refusal to obey secular laws. It is nondiscriminatory and there is no averment that it is oppressive. It has not been enforced so as to prevent appellants from freely selling, without license, their pamphlets and weekly publications on the streets (see *Com. v. Reid*, *supra*), but only as respects canvassing, soliciting and sales from door to door and house to house. It is within the express grant of municipal power and authority contained in the Third Class City Act of June 23, 1931, P. L. 932, Art. XXVI, sec. 2601, and its amendments, 53 PS ss. 2198-2601, and the prior acts regulating third class cities and boroughs.

The orders are severally affirmed, and it is ordered that the appellants appear in the court below at such time as may be fixed by that court and that they be severally committed until they have complied with their respective sentences or so much thereof as have not been performed.

[Filed July 23, 1942.]

[fol. 121] JUDGMENTS OF THE SUPERIOR COURT OF PENNSYLVANIA

No. 1 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA, CITY OF JEANNETTE

v.

ROBERT MURDOCK, JR., et al.

Appeal of Robert Murdock, Jr.

July 23, 1943.

The order is affirmed, and it is ordered that the appellant appear in the court below at such time as may be fixed by

that court and that he be committed until he has complied with his sentence or so much thereof as has not been performed.

Keller, P.J.

No. 2 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA, CIT OF JEANNETTE

v.

ANNA PENSEIK, et al.

Appeal of Anna Penseik

July 23, 1943.

The order is affirmed, and it is ordered that the appellant appear in the court below at such time as may be fixed by that court and that she be committed until she has complied with her sentence or so much thereof as has not been performed.

Keller, P.J.

No. 3 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA, CITY OF JEANNETTE

v.

W. L. MOUDER, et al.

Appeal of W. L. Moudor

July 23, 1943.

The order is affirmed, and it is ordered that the appellant appear in the court below at such time as may be fixed by that court and that he be committed until he has complied with his sentence or so much thereof as has not been performed.

Keller, P.J.

No. 4 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA, CITY OF JEANNETTE

v.

CHARLES S. SEBERS, et al.

Appeal of Charles S. Seders

July 23, 1942.

The order is affirmed, and it is ordered that the appellant appear in the court below at such time as may be fixed by that court and that he be committed until he has complied with his sentence or so much thereof as has not been performed.

Keller, P.J.

No. 5 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA, CITY OF JEANNETTE

v.

ROBERT LAMBORNE et al.

Appeal of Robert Lamborne

July 23, 1942.

The order is affirmed, and it is ordered that the appellant appear in the court below at such time as may be fixed by that court and that he be committed until he has complied with his sentence or so much thereof as has not been performed.

Keller, P.J.

[fol. 122]

No. 6 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA, CITY OF JEANNETTE

v.

ANTHONY MALTEZAS, et al

Appeal of Anthony Maltezas

July 23, 1942.

The order is affirmed, and it is ordered that the appellant appear in the court below at such time as may be fixed by

that court and that he be committed until he has complied with his sentence or so much thereof as has not been performed.

Keller, P.J.

No. 7 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA, CITY OF JEANNETTE

v.

ANASTASIA TZANES, et al.

Appeal of Anastasia Tzanes

July 23, 1943.

The order is affirmed, and it is ordered that the appellant appear in the court below at such time as may be fixed by that court and that she be committed until she has complied with her sentence or so much thereof as has not been performed.

Keller, P.J.

No. 8 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA, CITY OF JEANNETTE

v.

ELLAINE TZANES, et al.

Appeal of Ellaine Tzanes

July 23, 1942.

The order is affirmed, and it is ordered that the appellant appear in the court below at such time as may be fixed by that court and that she be committed until she has complied with her sentence or so much thereof as has not been performed.

Keller, P.J.

[fol. 123] SUPREME COURT OF PENNSYLVANIA, WESTERN
DISTRICT

No. 1222 a Miscellaneous Docket

IN THE SUPERIOR COURT OF PENNSYLVANIA, APRIL TERM, 1943

No. 1

COMMONWEALTH OF PENNSYLVANIA

v.

ROBERT MURDOCK, JR., Appellant

Petition for Appeal from the Judgment of Superior Court

[fol. 124] To the Honorable Justices of the Supreme Court:

The above named petitioner respectfully represents:

1. On February 25, 1940 petitioner, one of Jehovah's witnesses, was duly exercising the constitutional right of preaching the gospel of God's Kingdom from door to door within the City of Jeannette by means of distribution of Bible literature. From some recipients of such literature distributed petitioner accepted money contributions. On February 25, 1940 petitioner was arrested, while going from house to house, and charged with a violation of Ordinance No. 60 of the City of Jeannette which prohibited peddling within the city without a license for which the required daily fee was \$10.*

* ORDINANCE NO. 60: An ordinance regulating the canvassing for or soliciting of orders for goods, paintings, pictures, wares or merchandise of any kind within the Borough of Jeannette, and the delivery of such articles under orders so obtained or solicited and requiring all person or persons so engaged in canvassing, soliciting or delivering, to first procure from the Burgess a license to transact said business and also regulating the hawking, vending of fruits and other merchandise upon the streets by public outcry or by solicitation and requiring all person or persons thus engaged to first obtain a license from the Burgess.

Be it ordained and enacted by the Borough of Jeannette in Council assembled and it is hereby ordained and enacted by the authority of the same.

[fol. 125] Section 1 was not applied because petitioner was not soliciting or canvassing for orders or future delivery of goods, etc., but was actually delivering goods at the time to householder. Although no license was applied for or obtained petitioner was prosecuted under Section 2 of said ordinance which required a daily license at fee of \$10.

SECTION 1. That all persons canvassing for or soliciting within said Borough, orders for goods, paintings, pictures, wares, or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the following sums according to the time for which said license shall be granted.

For one day \$1.50, for one week seven dollars (\$7.00), for two weeks twelve dollars (\$12.00), for three weeks twenty dollars (\$20.00) provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.

SECTION 2. That all persons huckstering, peddling or selling fruits, goods or other merchandise upon the streets of said Borough by outcry or solicitation of the people upon the streets or thoroughfares of said Borough shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the sum of ten dollars (\$10.00) per day. Any person or persons failing to obtain a license as required by this ordinance shall upon conviction before the Burgess or Justice of the Peace of said Borough forfeit and pay a fine not exceeding one hundred dollars (\$100.00) nor less than the amount required for the license for such person or persons together with costs of suit, and in default of payment thereof, the defendant or defendants may be sentenced and committed to the Borough lock-up for a period not exceeding five (5) days or to the County Jail for a period not exceeding thirty (30) days.

Adopted by the Town Council of the Borough of Jeannette this 21st day of March, A. D. 1898.

D. E. Carle, President of Council.

Attest: Geo. S. Kirk, Secretary.

2. On February 26, 1940 petitioner and seven companions, each being one of Jehovah's witnesses, were jointly tried before the Mayor's Court of Jeannette under the aforesaid ordinance. Petitioner was adjudged guilty as charged and a fine of \$50 was assessed or in default of payment thereof petitioner was ordered committed to the county [fol. 126] prison for 30 days. On March 1, 1940 petitioner duly petitioned in writing to the Court of Quarter Sessions of Westmoreland County in the time and manner required by law for an order allowing appeal from said "summary conviction". The case was duly docketed as No. 193 (or 192) February Term 1940 of that court. Upon presentation of said petition for appeal Judge Keenan ordered that said petitions be taken under advisement pending the outcome of other cases then on appeal to the Superior Court. Petitioner's application for appeal was continued from term to term without an order of disposition being made thereon. On February 20, 1942, Judge Gordon of the Philadelphia Court of Common Pleas No. 2, specially presiding, duly considered said petition for appeal, together with all exhibits attached, and thereupon rendered and entered an order refusing the petition for appeal. (Pages 110a and 112a). The reasons assigned by the Quarter Sessions Court for refusal of said petition were:

"The appeal in this case was based upon the alleged unconstitutionality of an ordinance of the City of Jeannette requiring the licensing of peddlers and street vendors. The validity of the same ordinance under the Constitution of the United States was involved in the case of *Stewart vs. Commonwealth of Pennsylvania (City of Jeannette)*, 309 U. S. 674, in which the Supreme Court of the United States refused an appeal on March 25, 1940. The constitutionality of a similar ordinance under our State Constitution was also decided by the Superior Court in the case of *Pittsburgh vs. Ruffner*, 134 Pa. Sup. 192. The questions sought to be raised by the appellants here are, therefore, no longer disputable, and it was for this reason that we refused the appeal." [Foregoing as to refusal of petitioner's appeal.]

[fol. 127] 3. Thereafter petitioner duly took an appeal to the Superior Court in the manner required by law. On March 12, 1942 petitioner's affidavit was presented and filed with the Superior Court and writ issued to the Court of

Quarter Sessions and the case was returned April 13, 1942 to the April 1942 term of the Superior Court at Pittsburgh. The record, paper book, was duly printed and filed in the Superior Court containing a full report of all proceedings below. The petitioner duly filed a brief and argument in support of the appeal contending that the ordinance did not properly apply when rightly construed, and if construed so as to apply was unconstitutional because denying petitioner's constitutional rights of freedom of speech, press and worship of Almighty God. (Brief, pp. 13-63) Petitioner's brief filed in the Superior Court accompanies this petition for appeal. See also the Assignments of Error filed in the Superior Court attached hereto as Appendix A.

4. Thereafter the Superior Court on July 23, 1942, filed an opinion overruling the contentions urged by petitioner and held the ordinance to be constitutional as applied to petitioner and that petitioner's rights of freedom of speech, press, worship and conscience were not violated. The decision of the Superior Court is based on the authority of *Pittsburgh v. Ruffner*, 134 Pa. S. C. 192, *Commonwealth v. Stewart*, 137 Pa. S. C. 445, and the recent opinion of the United States Supreme Court in *Jones v. Opelika*, 62 S. Ct. 1231, decided June 8, 1942. In that case a petition for rehearing is now pending. On the strong dissenting opinions filed by Chief Justice Stone and three associate justices, and the briefs, it is expected the decision will be overruled.

5. The cases of *Pittsburgh v. Ruffner*, supra, and *Jones v. Opelika*, supra, are distinguishable from the case at bar [fol. 128] in that primarily there is here presented the question of proper construction of the ordinance. It was passed in 1898 and was not designed to cover this type of activity, i. e., preaching the gospel by distribution of literature from house to house. Such ordinances have been construed so as not to cover this activity. See *People v. Finkelstein*, 9 N. Y. S. 2d 941; *Semansky v. Stark*, 196 La. 307, 199 S. 129; *Shreveport v. Teague*, 8 S. 2d 640; *State v. Meredith*, 197 S. C. 351, 15 S. E. 2d 678; *Thomas v. Atlanta*, 59 Ga. App. 526, 1 S. E. 2d 598; *Cincinnati v. Mosier*, 61 Ohio App. 81, 22 N. E. 2d 418; *State ex rel. Hough v. Woodruff*, 147 Fla. 299, 2 S. 2d 577. Therefore the question if considered eliminates the constitutional question considered by the Superior Court. It is the duty of an appellate court where

a constitutional question is presented first to consider the proper construction of a statute. If the statute or ordinance can be construed so as to avoid consideration of the constitutional question, it should first consider the question of proper construction. The Superior Court did not consider the proper construction of the ordinance as to whether it properly applied to petitioner.

6. Also, *Pittsburgh v. Ruffner*, *supra*, and *Jones v. Opelika*, *supra*, are distinguishable from the case at bar on the constitutional question in this, to wit, the ordinance provides an excessive and exorbitant fee of \$10 per day which is unreasonable and prohibitive as to exercise of constitutional right to distribute literature from house to house and is a prohibitive burden. The Superior Court mistakenly says (footnote 1) that the fees provided for were \$1.50 per day, \$7.00 per week, \$12.00 for two weeks and \$20 for three weeks. It is to be noticed that these are the fees charged for canvassing and soliciting for future delivery of goods, provided for in Section 1 of the ordinance. Section 1 does not apply here. Section 2 applies and requires payment of \$10 per day. This is an excessive and prohibitive burden. The testimony shows that petitioner was not engaged in this activity as a means of a livelihood but had other means of support. The activity is not commercial and is charitable, benevolent work of doing good in the public interest. The record here presents an ordinance and case squarely within the exceptions announced by the majority opinion in *Jones v. Opelika*, *supra*.

7. The Bill of Rights of the Constitution of Pennsylvania is much stronger than the Fourteenth Amendment of the United States Constitution making the First Amendment applicable to the States. The case of *Jones v. Opelika*, *supra*, is not binding in this case. Had the decision been the other way it would be binding because the Supreme Court would then be upholding a civil right which all states would be bound to recognize. Whereas since the United States Supreme Court merely held that a right could not be guaranteed under the general due process clause, it is not in point in Pennsylvania where the more explicit and stronger constitutional provisions of guarantee are to be found. Under the case of *Esie Ry. Co. v. Tompkins*, 304 U.S. 64, this Court must look to its own Commonwealth's guarantee and constitutional mandate and

grant the rights and privileges therein guaranteed to the people in spite of the weaknesses found in the Federal Constitution as construed by the present Supreme Court of the United States. Further, even though the issues in this case were found to be identical with those in *Jones v. Opelika*, supra, this Court would not be bound to follow the decision of the United States Supreme Court because the granting of the rights sought in this case is not inconsistent with the United States Constitution. On the other hand, the granting of the right is not only consistent with the Pennsylvania Constitution, but the Commonwealth's Constitution says that the right shall not be denied. The position contended for by petitioner here has been directly supported by the Supreme Court of Kansas in its opinion filed July 11, 1942 in *State v. Smith and Griggsby*, — P. 2d —, where the State court of last resort refused to follow the rule laid down by the United States Supreme Court in the *Gobitis* (310 U. S. 586) flag-salute case, because of the stronger injunctions contained in the Kansas Constitution. Printed slip opinion in that Kansas case accompanies this petition. We say that the permitting of the application of the ordinance here in question to activity of petitioner is identically the same which caused the American Revolution and rebellion against tyranny imposed under the "Stamp Taxes" or "Taxes on Knowledge". To convert a misapplied peddler's license law into a modern-day *stamp tax* is equivalent to imposing a burden of "censorship" and absolute prohibition. If the Federal Constitution is too weak to protect inherent rights and does not contain sufficiently explicit provisions against the dangers from which the forefathers fled, then we now turn and appeal to this august Court to throw up as a barrage the stronger and more definite provisions of the Constitution of this Commonwealth as a last bulwark of liberty for the people in lieu of the weaker Federal compact.

8. Upon the petition for appeal duly presented to the Court of Quarter Sessions, and upon the record and application made to the Superior Court, facts and circumstances were shown that the courts below abused their discretion in refusing to allow the appeal prayed for because the petitioner has been denied constitutional rights.

[fol. 131] 9. We submit that on the basis of the petition for appeal duly presented to the Quarter Sessions Court

of Westmoreland County, the printed record, paper book, assignments of error duly filed in the Superior Court and the "Brief for Appellants" duly filed in that Court, and by virtue of this application, there is now presented to this Court as ground for allowance of appeal the following questions:

(A) Do the terms "peddling" and "selling fruit and other merchandise" of the ordinance when properly construed cover activity of petitioner; i. e., when construed so as to make it consistent with the Constitution as to petitioner's right to preach from house to house by means of distributing written or printed sermons while receiving money contributions to aid such work?

Answer: "No."

(B) Does the term "merchandise" of the ordinance include books and literature containing information and opinion when properly construed so as to make it consistent with the Constitution?

Answer: "No."

(C) Does the ordinance as construed and applied by the courts below deny and abridge or burden petitioner's rights of freedom of speech, press and worship, contrary to the Constitution of the Commonwealth of Pennsylvania?

Answer: "Yes."

(D) Does the ordinance as construed and applied by the courts below deny and abridge or burden petitioner's rights of freedom of speech, press and worship, contrary to the First and Fourteenth Amendments to the United States Constitution?

Answer: "Yes."

10. The opinion of the Superior Court is attached hereto and marked Appendix B.

[fol. 132] 11. The opinion of the Court of Quarter Sessions in refusing the appeal is set forth in full at page 3, supra, paragraph 2 of this application.

12. Printed slip opinion of the United States Supreme Court, containing also the three dissenting opinions, in *Jones v. Opelika*, 62 S. Ct. 1231-1251, accompanies this application.

13. The decision of the Superior Court conflicts with its earlier decision involving activity of Jehovah's witnesses,

See *Commonwealth v. Reid*, 20 A. 2d 841, — S. C. —, decided June 30, 1941. It also conflicts with the decision of the United States District Court for the Western District of Pennsylvania (*Douglas v. City of Jeannette*, 39 F. Supp. 32) where this identical ordinance was declared invalid and its enforcement enjoined as applied to Jehovah's witnesses. The decision of the Superior Court also conflicts with *Reid v. Brookville*, 39 F. Supp. 30, and also with *State v. Greaves*, 112 Vt. 222, 22 A. 2d 497; *City of Blue Island v. Kozul*, 379 Ill. 511, 41 N. E. 2d 545; *Village of South Holland v. Stein*, 373 Ill. 472, 26 N. E. 2d 868; *McConkey v. City of Fredericksburg*, 179 Va. 556, 19 S. E. 2d 682; *Borchert v. City of Ranger*, 42 F. Supp. 577; *Hough v. Woodruff*, 147 Fla. 299, 2 S. 2d 577; *Ex parte Walrod*, 120 P. 2d 783; *Ex parte Winnett*, 121 P. 2d 312; *Zimmermann v. London*, 38 F. Supp. 582; *Donley v. City of Colorado Springs*, 40 F. Supp. 15; *People v. Banks*, 6 N. Y. S. 2d 41.

14. Printed copy of the record, i. e., paper book, filed in the Superior Court, and a printed copy of Brief for Appellants accompany this petition, together with a printed copy (slip opinion) of each of the opinions herein mentioned from other jurisdictions, each of which opinions is marked as to reference thereto in paragraph of this petition.

15. Petitioner also presents herewith separate typewrit- [fol. 133] ten memorandum of law in support of the petition for allowance of appeal which is requested to be read and considered in connection with this petition in addition to the documents and decisions hereinbefore mentioned.

16. The Superior Court of Pennsylvania erred in considering the questions presented and so far departed from the regular course of judicial proceedings as to require the exercise of this Court's power of supervision so as to halt the same. That court's errors in this case seriously injure and aggrieve the petitioner. That good cause is herein shown why this Court should allow the petition for appeal here presented. It is manifest that the courts below abused their discretion in denying the appeals here sought.

Wherefore your petitioner prays that an appeal be allowed by the Supreme Court of Pennsylvania from said judgment of the Superior Court and that a rule to show cause be issued upon this petition and be duly served

against the appellee and petitioner will ever pray for such other and further relief to which petitioner may be found entitled.

Harry M. McCaughey, 1011 Chestnut Street, Philadelphia, Pennsylvania, Attorney for Petitioner.

Hayden C. Covington, 117 Adams Street, Brooklyn, New York, of Counsel.

COMMONWEALTH OF PENNSYLVANIA,

County of —, ss:

—, being duly sworn according to law, deposes and says, that the facts set forth in the foregoing petition are true.

—, Notary Public.

(Exhibit A, being the Assignments of error in the Superior Court, and Exhibit B, being the opinion of the Superior Court,* are not certified here because they are certified in another part of the Record.)

* attached to this petition for appeal.

[fol. 134] ORDERS OF SUPREME COURT OF PENNSYLVANIA REFUSING ALLOCATURS

No. 1222 A Miscellaneous Docket

COMMONWEALTH OF PENNSYLVANIA

v.

ROBERT MURDOCK, JR., Appellant

9/28/42. Allocatur refused. By the Court.

No. 1223 A Miscellaneous Docket

COMMONWEALTH OF PENNSYLVANIA

v.

ANNA PERISICH, Appellant

9/28/42. Allocatur refused. By the Court.

No. 1224 A Miscellaneous Docket

COMMONWEALTH OF PENNSYLVANIA

v.

W. L. MOUDER, Appellant

9/28/42. Allocatur refused. By the Court.

No. 1225 A Miscellaneous Docket

COMMONWEALTH OF PENNSYLVANIA

v.

CHARLES S. SEDERS, Appellant

9/28/42. Allocatur refused. By the Court.

No. 1226 A Miscellaneous Docket

COMMONWEALTH OF PENNSYLVANIA

v.

ROBERT LAMBORNE, Appellant

9/28/42. Allocatur refused. By the Court.

No. 1227 A Miscellaneous Docket

COMMONWEALTH OF PENNSYLVANIA

v.

ANTHONY MALTEZAS, Appellant

9/28/42. Allocatur refused. By the Court.

No. 1228 A Miscellaneous Docket

COMMONWEALTH OF PENNSYLVANIA

v.

ANASTASIA TZANES, Appellant

9/28/42. Allocatur refused. By the Court.

No. 1229 A Miscellaneous Docket

COMMONWEALTH OF PENNSYLVANIA

v.

ELLAINE TZANES, Appellant

9/28/42. Allocatur refused. By the Court.

[fol. 135] IN THE PENNSYLVANIA SUPERIOR COURT

No. 346

No. 1 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ROBERT MURDOCK, JR., Appellant

No. 2 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ANNA PERISICH, Appellant

No. 3 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

WILLARD L. MOWDER, Appellant

No. 4 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

CHARLES SEDERS, Appellant

No. 5 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ROBERT LAMBORN, Appellant

No. 6 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ANTHONY MALTEZOS, Appellant

No. 7 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ANASTASIA TZANES, Appellant

No. 8 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ELAINE TZANES, Appellant

DESIGNATION OF RECORD ON PETITION FOR WRIT OF CERTIORARI
IN THE SUPREME COURT OF THE UNITED STATESTo Pier Dannals; Prothonotary of Pennsylvania Superior
Court.

SIR:

You will please prepare immediately the following documents heretofore filed and incorporate them in one book or binder for the purpose of constituting the record in each of the above entitled and numbered causes, said record to consist of the following documents:

1. Printed record or paper book filed by said appellants in the above entitled and numbered causes in the Superior [fol. 136] Court, which paper book comprises the entire record and testimony of the trial court.

2. One copy of uniform assignments of error filed in each of said eight cases, using the copy filed in the case of Commonwealth v. Murdock, No. 1, followed by a statement that like assignments were filed in the other seven cases.

3. One copy of the opinion of the Superior Court written by President Judge Keller, dated July 23, 1942, and filed in the above entitled and numbered causes.

4. One copy of each of the eight judgments rendered; that is, a copy of the Superior Court judgment in each of the above entitled and numbered causes.

5. One copy only of the petition for appeal to Pennsylvania Supreme Court from the judgment of the Superior Court, using the petition for appeal in the case of Commonwealth v. Murdock (No. 1) and omitting Appendix A and

Appendix B of said petition for appeal because said documents appear elsewhere in the record.

6. Copy of each order or decree entered by Pennsylvania Supreme Court on September 28, 1942 refusing allocatur in each of the above entitled and numbered causes.

7. A copy of this designation of the record also to be incorporated in the record.

8. A certificate by you as prothonotary that the above entitled documents constitute the entire designated record for use on petition for writ of certiorari in each of the above titled and numbered cases.

The above documents shall comprise the entire record for use in support of the petition for writ of certiorari, and you are requested to prepare the record in one binder and deliver as requested and as required by law as soon as [fol. 137] possible.

Dated at the City of New York, October 8, 1942.

Hayden C. Covington, Attorney for Appellants,
Office and P. O. Address: 117 Adams St., Brooklyn, N. Y., Telephone Triangle 5-1474.

CERTIFICATE OF SERVICE

I, Hayden C. Covington, attorney for appellants in the above entitled and numbered causes, hereby certify that I have served a copy of the within "Designation of the Record" upon counsel for the City of Jeannette and the Commonwealth by depositing such copy, securely enclosed in a sealed envelope and with postage fully prepaid and addressed to Fred B. Trescher, Irwin Gas Coal Building, Greensburg, Pennsylvania, in a United States Post Office at the City of New York in the State of New York on this 8th day of October, 1942.

Hayden C. Covington.

STATE OF NEW YORK,

County of Kings, ss:

Before me, the subscriber, a notary public in and for said county and state, appeared personally Hayden C. Covington and acknowledged that he signed the foregoing certificate of service.

William K. Jackson, Notary Public.

[fol. 138] IN THE PENNSYLVANIA SUPERIOR COURT

No. 346

No. 1 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ROBERT MURDOCK, JR., Appellant

No. 2 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ANNA PERISICH, Appellant

No. 3 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

WILLARD L. MOWDER, Appellant

No. 4 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

CHARLES SEDERS, Appellant

No. 5 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ROBERT LAMBORN, Appellant

No. 6 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ANTHONY MALTEZOS, Appellant

No. 7 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ANASTASIA TZANES, Appellant

No. 8 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ELAINE TZANES, Appellant

DESIGNATION OF RECORD ON PETITION FOR WRIT OF CERTIORARI
IN THE SUPREME COURT OF THE UNITED STATES

To Pier Dannals, Prothonotary of Pennsylvania Superior
Court

SIR:

You will please prepare immediately the following documents heretofore filed and incorporate them in one book or binder for the purpose of constituting the record in each of the above entitled and numbered causes, said record to consist of the following documents:

1. Printed record or paper book filed by said appellants in the above entitled and numbered causes in the Superior [fol. 139] Court, which paper book comprises the entire record and testimony of the trial court.

2. One copy of uniform assignments of error filed in each of said eight cases, using the copy filed in the case of Commonwealth v. Murdock, No. 1, followed by a statement that like assignments were filed in the other seven cases.

3. One copy of the opinion of the Superior Court written by President Judge Keller, dated July 23, 1942, and filed in the above entitled and numbered causes.

4. One copy of *each* of the eight judgments rendered; that is, a copy of the Superior Court judgment in each of the above entitled and numbered causes.

5. One copy only of the petition for appeal to Pennsylvania Supreme Court from the judgment of the Superior Court, using the petition for appeal in the case of Common-

wealth v. Murdock (No. 1) and omitting Appendix A and Appendix B of said petition for appeal because said documents appear elsewhere in the record.

6. Copy of each order or decree entered by Pennsylvania Supreme Court on September 28, 1942 refusing allocatur in each of the above entitled and numbered causes.

7. A copy of this designation of the record also to be incorporated in the record.

8. A certificate by you as prothonotary that the above entitled documents constitute the entire designated record for use on petition for writ of certiorari in each of the above titled and numbered cases.

The above documents shall comprise the entire record for use in support of the petition for writ of certiorari, and you are requested to prepare the record in one binder and deliver as requested and as required by law as soon as [fol. 140] possible.

Dated at the City of New York, October 8, 1942.

Hayden C. Covington, Attorney for Appellants, Office and P. O. Address: 117 Adams St., Brooklyn, N. Y. Telephone Triangle 5-1474.

Certificate of Service

I, Hayden C. Covington, attorney for appellants in the above entitled and numbered causes, hereby certify that I have served a copy of the within "Designation of the Record" upon counsel for the City of Jeannette and the Commonwealth by depositing such copy, securely enclosed in a sealed envelope and with postage fully prepaid and addressed to Fred B. Trescher, Irwin Gas Coal Building, Greensburg, Pennsylvania, in a United States Post Office at the City of New York in the State of New York on this 8th day of October, 1942.

Hayden C. Covington.

STATE OF NEW YORK,
County of Kings, ss.:

Before me, the subscriber, a notary public in and for said county and state, appeared personally Hayden C. Covington and acknowledged that he signed the foregoing certificate of service.

William K. Jackson, Notary Public.

[fol. 141] IN THE PENNSYLVANIA SUPERIOR COURT, No. 346

No. 1 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ROBERT MURDOCK, JR., Appellant

No. 2 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ANNA PERISICH, Appellant

No. 3 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

WILLARD L. MOWDEE, Appellant

No. 4 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

CHARLES SEDERS, Appellant

No. 5 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ROBERT LAMBORN, Appellant

No. 6 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ANTHONY MALTEZOS, Appellant

No. 7 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ANASTASIA TZANES, Appellant

No. 8 April Term, 1943

COMMONWEALTH OF PENNSYLVANIA

v.

ELLAINÉ TZANES, Appellant

DESIGNATION OF RECORD ON PETITION FOR WRIT OF CERTIORARI
IN THE SUPREME COURT OF THE UNITED STATES

To Pier Dannals, Prothonotary of Pennsylvania Superior Court.

SIR:

You will please prepare immediately the following documents heretofore filed and incorporate them in one book or binder for the purpose of constituting the record in each of the above entitled and numbered causes, said record to consist of the following documents:

1. Printed record or paper book filed by said appellants in the above entitled and numbered causes in the Superior [fol. 142] Court, which paper book comprises the entire record and testimony of the trial court.

2. One copy of uniform assignments of error filed in each of said eight cases, using the copy filed in the case of Commonwealth v. Murdock, No. 1, followed by a statement that like assignments were filed in the other seven cases.

3. One copy of the opinion of the Superior Court written by President Judge Keller, dated July 23, 1942, and filed in the above entitled and numbered causes.

4. One copy of each of the eight judgments rendered; that is, a copy of the Superior Court judgment in each of the above entitled and numbered causes.

5. One copy only of the petition for appeal to Pennsylvania Supreme Court from the judgment of the Superior Court, using the petition for appeal in the case of Commonwealth v. Murdock (No. 1) and omitting Appendix A and Appendix B of said petition for appeal because said documents appear elsewhere in the record.

6. Copy of each order or decree entered by Pennsylvania Supreme Court on September 28, 1942 refusing allocatur in each of the above entitled and numbered causes.

7. A copy of this designation of the record also to be incorporated in the record.

8. A certificate by you as prothonotary that the above entitled documents constitute the entire designated record for use on petition for writ of certiorari in each of the above titled and numbered cases.

The above documents shall comprise the entire record for use in support of the petition for writ of certiorari, and you are requested to prepare the record in one binder and deliver as requested and as required by law as soon as [fol. 143] possible.

Dated at the City of New York, October 8, 1942.

Hayden C. Covington, Attorney for Appellants, Office
and P. O. Address: 117 Adams St., Brooklyn, N. Y.
Telephone Triangle 5-1474.

CERTIFICATE OF SERVICE

I, Hayden C. Covington, attorney for appellants in the above entitled and numbered causes, hereby certify that I have served a copy of the within "Designation of the Record" upon counsel for the City of Jeannette and the Commonwealth by depositing such copy, securely enclosed in a sealed envelope and with postage fully prepaid and addressed to Fred B. Trescher, Irwin Gas Coal Building, Greensburg, Pennsylvania, in a United States Post Office at the City of New York in the State of New York on this 8th day of October, 1942.

Hayden C. Covington.

STATE OF NEW YORK,

County of Kings, ss:

Before me, the subscriber, a notary public in and for said county and state, appeared personally Hayden C. Covington and acknowledged that he signed the foregoing certificate of service.

William K. Jackson, Notary Public Kings County
Kings Co. Clks. No. 73, Reg. No. 3005. Commis-
sion expires March 30, 1943. (Seal.)

[fol. 144]

CERTIFICATE OF RECORD

COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss:

I, Pier Dannals, Prothonotary of The Supreme Court of Pennsylvania, for the Western District thereof, Do Hereby Certify that the foregoing Record is a true and faithful copy of the whole of the Record and Proceedings of the The Supreme Court of Pennsylvania, in the Western District aforesaid, in certain suits therein pending, wherein Robert Murdock, Jr., et al. are appellants and Commonwealth of Pennsylvania is appellee.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the said The Supreme Court of Pennsylvania, in and for the Western District, at Pittsburgh, this — day of October, in the year of our Lord one thousand nine hundred and forty-two.

Pier Dannals, Prothonotary. (Seal.)

[fol. 145]

CERTIFICATE OF RECORD

COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss:

I, Pier Dannals, Prothonotary. The Superior Court of Pennsylvania, sitting at Pittsburgh, Do Hereby Certify that the foregoing Record is a true and faithful copy of the whole of the Record and Proceedings of The Superior Court of Pennsylvania, Sitting at Pittsburgh aforesaid, in certain suits therein pending, wherein Robert Murdock, Jr. et al., are appellants and Commonwealth of Pennsylvania is appellee.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the said The Superior Court of Pennsylvania, at Pittsburgh, this day of October, in the year of our Lord one thousand nine hundred and forty-two.

Pier Dannals, Prothonotary. (Seal.)

[fol. 146] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1942

No. 480

ORDER ALLOWING CERTIORARI—Filed February 15, 1943

The petition herein for a writ of certiorari to the Superior Court of the Commonwealth of Pennsylvania is granted, and the case is assigned for argument immediately following Nos. 280, 314, and 966, October Term, 1941.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Clerk's note: Similar orders were entered in Nos. 481-87.

(4778)

FILE COPY



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

Nos. 480 - 487

Robert Murdock, Jr., Anna Perisich, Willard L. Mowder,
Charles Seders, Robert Lamborn, Anthony Maltezos,
Anastasia Tzanes, and Ellaine Tzanes,
Petitioners.

v.

COMMONWEALTH OF PENNSYLVANIA
(City of Jeannette)
Respondent

**Petition for Writs of Certiorari to the
Superior Court of Pennsylvania**

HAYDEN C. COVINGTON
Attorney for Petitioners

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Pennsylvania Statutes (Purdon)	
Title 53, par. 2198-2601 ["Third Class City Act," June 23, 1931, P. L. 932, Art. XXVI, s. 2601]	15-27
United States Code Annotated	
Title 28, par. 344 (b) [Judicial Code, sec. 237 (b)]	2, 16, 29
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MISCELLANEOUS CITATIONS

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ALMIGHTY GOD, Word of [The Bible]:

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

Nos.

Robert Murdock, Jr., Anna Perisich, Willard L. Mowder,
Charles Seder, Robert Lamborn, Anthony Maltezos,
Anastasia Tzanes, and Ellaine Tzanes,

Petitioners

v.

COMMONWEALTH OF PENNSYLVANIA

(City of Jeannette)

Respondent

Petition for Writs of Certiorari to the Superior Court of Pennsylvania

TO THE SUPREME COURT OF THE UNITED STATES:

The above named petitioners present this their petition for writs of certiorari and show unto the Supreme Court of the United States as follows:

A.

Summary Statement of Matters Involved

1. Preliminary Statement.

The ordinance involved here is the identical ordinance questioned in Douglas et al., *Petitioners*, v. Jeannette et al., No. 450, October Term 1942, certiorari to the United States Third Circuit Court of Appeals. The facts in this case are

identical to the facts in that case. Except as to question No. 3 of the questions to be relied upon (page 3, *infra*), the questions here presented are the same as questions presented in the *Douglas* case. The difference is that the opinions and decrees are by different courts and question three is new and different; see footnote 4, page 13, *infra*. The opinion of the Superior Court construing the ordinance in this case will, however, throw considerable light upon the issues presented in the *Douglas* case. The case at bar is not controlled by this court's decision in the case of *Jone v. Opelika*, 316 U. S. . . ., 62 S. Ct. 1231. The distinction is that petitioners here claim that the license taxes imposed are *excessive* and a "substantial clog" on the freedoms of speech, press and worship. The issues here presented are not foreclosed by this Court's holding in that case, because here is involved a new question of discrimination. This case presents an opportunity for this court to explain what is meant by the term "substantial clog". The term therefore requires definition. This new term can be applied here because all facts that the Court would want to know in applying the new term are fully presented in the record.

2. *Statutory Provision Sustaining Jurisdiction.*

Section 237 (b) of the Judicial Code [28 U. S. C. A. 344 (b)] sustains jurisdiction of this Court.

3. *Validity of the City Ordinance Drawn in Question.*

The legislation here drawn in question is ordinance number 60 of the City of Jeannette, Pennsylvania, which reads as follows, to wit:

City of Jeannette, Pa.
Ordinance No. 60

An Ordinance regulating the canvassing for or soliciting of orders for goods, paintings, pictures,

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wares or merchandise of any kind within the Borough of Jeannette, and the delivery of such articles under orders so obtained or solicited and requiring all person or persons so engaged in canvassing, soliciting or delivering, to first procure from the Burgess a license to transact said business, and also regulating the hawking, vending of fruits and other merchandise upon the streets by public outcry or by solicitation and requiring all person or persons thus engaged to first obtain a license from the Burgess.

Be It Ordained and enacted by the Borough of Jeannette in Council assembled and it is hereby ordained and enacted by the authority of the same.

Section I.* That all persons canvassing for or soliciting within said Borough, orders for goods, paintings, pictures, wares, or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact such business and shall pay to the Treasurer of said Borough therefor the following sums according to the time for which said license shall be granted.

For One day \$1.50, for One week seven \$7.00 dollars, for two weeks twelve \$12.00 dollars, for three weeks twenty \$20.00 Dollars, provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.

Section II. That all persons huckstering, peddling, or selling fruits, goods or other merchandise upon the streets of said Borough by outcry or solicitation of the

* Section one of the ordinance providing for payment of a tax of \$1.50 per day applies only to *canvassing and soliciting* of orders or delivering under orders and does not apply to *peddling or huckstering*. It is not contended that petitioners solicited orders. They were prosecuted for peddling and huckstering without payment of the \$10 daily license. See record in *Stewart v. Jeannette*, 309 U. S. 674, 699, No. 722, October Term 1939, certiorari denied.

people upon the streets or thoroughfares of said Borough shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefore, the sum of ten \$10.00 Dollars per day. Any person or persons failing to obtain a license as required by this ordinance shall, upon conviction before the Burgess or Justice of the Peace of said Borough forfeit and pay a fine not exceeding one hundred \$100.00 Dollars, nor less than the amount required for the license for such person or persons together with the costs of suit, and in default of payment thereof, the defendant or defendants may be sentenced and committed to the Borough lock-up for a period not exceeding five (5) days or to the County Jail for a period not exceeding thirty (30) days.

Adopted by the Town Council of the Borough of Jeannette this first day of March, A.D. 1898.

D. E. Carle, President of Council:

Attest: Geo. S. Kirk, Secretary.

J. J. Claire Manson, City Clerk, of the City of Jeannette, Pennsylvania, hereby certify that the foregoing is a true and correct copy of Ordinance No. 60 of the Borough of Jeannette (now the City of Jeannette), Pennsylvania.

J. Claire Manson, City Clerk.

[Seal]

R. Sa, 20a.

4. *Date of Judgment and Orders to be Reviewed.*

The decrees or judgments of the Pennsylvania Superior Court were rendered and entered on July 23, 1942, in causes numbers 1 to 8, inclusive, on docket of said court. (R. 122-5) Within the time required by law petitions for leave to appeal from said judgments to the Pennsylvania Supreme Court were duly filed and allocatur refused by that court September 28, 1942; (R. 126-134; 134-135) Time for filing pe-

tion for writs of certiorari in this court expires on December 28, 1942. This petition is filed within that time.

5. *Time and Manner in which Questions Raised Below.*

In the Mayor's Court at the close of the Commonwealth's case and at the close of the entire case petitioners duly filed their motion to dismiss on the ground, among other things, that the ordinance as applied deprived them of their rights of freedoms of press, speech and worship of Almighty God, contrary to the United States Constitution. (R. 59a-60a; 106a) On February 26, 1940, said motions were overruled, petitioners adjudged guilty and fined \$50 each or in default thereof to spend 30 days in the Westmoreland County Prison. (R. 60a; 107a) On March 1, 1940, petitioners by written petition for appeal to the Court of Quarter Sessions Court of Westmoreland County complained of the judgment against them under the ordinance because as applied it abridged their rights of freedoms of speech, press and of worship, contrary to the Fourteenth Amendment to the United States Constitution. (R. 6a; 18a) The petitions duly filed were continued indefinitely from term to term by the judge of the Court of Quarter Sessions of Westmoreland County. The Quarter Sessions Court, on February 20, 1942, found that the appeals involved the constitutionality of the ordinance, and denied the appeals because the questions raised were no longer disputable on authority of *Stewart v. Commonwealth*, 309 U. S. 674, and *Pittsburgh v. Ruffner*, 134 Pa. S. C. 192. (R. 110a; 111a) Appeals were duly taken to the Superior Court from the orders refusing said appeals. By assignments of error petitioners complained of the ordinance on the grounds that it abridged said freedoms contrary to the Federal Constitution. (R. 113-4) Within ten days from date of the decrees entered by the Superior Court each petitioner filed his petition for appeal to the Supreme Court, complaining of the ordinance on the grounds that it provided for excessive tax and; as applied, abridged freedoms of

speech, press and worship of Almighty God, contrary to the Federal Constitution. (R. 126-34) Each of the courts below held that the federal questions were properly raised and that the ordinance was constitutional and that petitioners had not been denied any federal rights.

6. *Opinions of the Courts Below.*

The opinions of the Mayor's Court and Court of Quarter Sessions were not reported, but appear in the record. (R. 107a; 109a-111a) The opinion of the Superior Court is not officially reported, but is unofficially reported in 27 A. 2d 667, and appears in the record at pages 115 to 122, inclusive. Previous opinion of the Superior Court relating to similar ordinances as applied to Jehovah's witnesses is *Commonwealth v. Reid*, 144 Pa. S. C. 569, 20 A. 2d 841; See *Pittsburgh v. Ruffner*, 134 Pa. S. C. 192, 4 A. 2d 224.

7. *Statement of Facts.*²

The occupation of each petitioner is ordained minister of Jehovah God, representing the Watch Tower Bible & Tract Society, a Pennsylvania corporation, and, as such representative, certified by said Society to be one of Jehovah's witnesses preaching the gospel of God's kingdom, The Theocracy. A sample of the credential of ordination carried by each appellant was received in evidence. (R. 77a) As such ordained ministers, appellants called from house to house presenting to the people the gospel in printed form. In this they acted exactly as did the Lord Jesus Christ and His apostles, who taught publicly and from house to house.—Luke 8:1; 13: 26; Acts 5: 42; Acts 20: 20; 1 Peter 2: 9, 21.

¹ Relied on in this case by Superior Court as authority, involves a permit ordinance identical with the ordinance of Irvington, N. J., outlawed in the case of *Schneider v. State*, 308 U. S. 147.

² Since this Court, in *Jones v. Opelika*, supra, has said that it desires to know the income and disbursements from petitioners' activity it is necessary to go into a long detailed analysis of 108 pages of evidence in the record.

Each petitioner approached the homes of the people of Jeannette in an orderly and proper manner by knocking at the door or ringing the doorbell: When the householder or occupant arrived at the door the caller presented his 'testimony card', entire text of which appears in the Record at page 78a.

Each petitioner also offered to play (and did play when permitted) a record entitled "Snare and Racket", showing the clear distinction between "religion", which is demonism, and Christianity, which is the true worship of Almighty God. That phonograph record was reproduced in open court and appears transcribed in the record. R. 60a to 62a.

When the householder had fully considered the card or record the caller exhibited the literature, a book entitled "Salvation" and certain booklets. If the householder desired the literature he could immediately accept and keep it. If financially able and willing, he could at the same time contribute the sum of twenty-five cents to help print and distribute more like literature. If unable at the time to contribute any sum, he could nevertheless accept and retain the proffered literature, *gratis*, upon condition that he agree to study its contents with his Bible.

Contents of said literature related exclusively to a revelation of God-given prophecies of the Bible as such are being fulfilled in modern times, showing that this is the time of "the end" foretold in Holy Writ, as evidenced by the rapid advance of the Devil's dictator-totalitarian rule projected and pushed by a giant totalitarian religious organization which is bent on achieving *world domination* by destroying all democracy from off the earth and ruling the peoples of all nations with an iron hand; and that the people's only hope of escape from such scourge is "the battle of that great day of God Almighty" at Armageddon (Revelation 16: 13-16), now near; when JEHOVAH, the Almighty God, will completely destroy His and mankind's chief enemy, Satan, and also Satan's entire organization invisible and visible consisting of commercial, political and ecclesiastical elements, and

which destructive ACT OF GOD shall be immediately followed by continuing growth and irresistible expansion of His Theocratic Government which alone shall prevail eternally in all the universe, to bring peace, joy, prosperity, happiness and endless life to those on earth who survive that most terrible battle of all time, and eventually also to many who have died in centuries past and who shall by the power of the Creator be raised from the dead to live in perfection upon earth in obedience to the righteous laws of Jehovah's Government under His King Christ Jesus and God's resurrected "princes in all the earth".—Isaiah 32:1; Micah 5:4,5; Psalm 45:16.

Upon any householder's indicating unwillingness to read the caller's card, listen to the phonograph or obtain the literature, the caller would quietly pass on to the next house.

The evidence failed to show, and it is not contended, that petitioners "trespassed" or were in any case offensive or annoying in their method of presentation. They were quiet and courteous in their dealings with everyone whom they approached in Jeannette.

The undisputed evidence showed that the bound books entitled "Salvation" and "Creation" distributed by petitioners were published and distributed by the Watch Tower society for cost of 20 cents per volume to local organizations or congregations of part-time workers and ministers referred to in the testimony as "companies". (R. 101a-102a; 67a) That the local congregations or companies had expenses of maintaining a meeting hall or place of worship. That the society permits the local organization to make its own rules as to amount to be contributed by the local ministers engaged in such part-time work. That such *companies* whose members had been assigned the City of Jeannette as territory to preach in had established the rate of 25 cents per volume to be contributed by each member or minister for the literature which he distributed from house to house. (R. 83a; 93a; 101a-102a) That such assessed figure included a difference of 5c per volume to defray local meeting hall

expense (R. 87a) and did not permit the making of any profit whatsoever on the literature placed. (R. 101a) That the publisher or minister had to bear his own expense of travel to and from territory and cost of any books or literature placed with the people without contribution, which expense was not taken care of from money received from books placed but by money earned by the petitioners in their secular activity. Thus each petitioner operated at a loss. R. 64a; 66a.

The exception to the above arrangement was the petitioner Robert Lamborn, a resident of Cadiz, Ohio, and a member of the Cadiz congregation of Jehovah's witnesses, who was visiting in Jeannette and vicinity on the day in question. He obtained his literature from the Cadiz congregation. This congregation let the books to members of the congregation, ministers, for distribution from house to house on the basis of 20 cents per volume paid by each minister. He also paid three cents per volume for the booklet "Government and Peace" which he gave free of charge with every bound volume placed and to persons too poor to contribute. That he gave away many volumes of literature to persons who contributed no money. That on the whole he spent more money than he took in from the public and what he contributed to the work exceeded his expenses. In addition to this he has his expense of travel, etc., for which he receives no reimbursement. Lamborn is a farmer and earns his living from the soil. (R. 73a; 65a-76a) He did not make any profit from literature placed in Jeannette or elsewhere. R. 76a.

The other exception was petitioner Earl Singer, the only full-time publisher, "pioneer minister," who said that the society had made arrangements for full-time ministers to receive the books for five cents each (a discount of fifteen cents under cost of publication) or one-fourth of the cost price paid by the congregations to the society because they do not ordinarily have support from secular activity as does the part-time minister. This discount on each book was a

contribution from the society to aid the full-time publisher to defray expense of operation and to bear the expense of giving away literature free. In his own case, however, Singer testified that he made his living and obtained necessary financial support from money received from his trucking business which he owned and that he ~~did not make any money whatsoever from his preaching activity~~ from house to house because in the long run he gave away more literature free than what he distributed to those who contributed. That over a month's time his expense in preaching far exceeded the amount of money received from contributions. R. 100a-105a.

The case of Charles Seders is typical of all the *part-time* ministers, petit-masters. He contributes 25c per book to his local congregation and distributes the books from house to house at the same contribution. During January, 1940, the month prior to the trial in the Mayor's Court he had distributed 37 bound books, receiving contributions only from persons who accepted half of that number. His secular occupation was as a tin-mill worker. He preached from house to house on Sundays. R. 90a-96a.

While the testimony of the witnesses for the Commonwealth is that some of them "bought" literature from some of the petitioners for "25c" they uniformly admitted that what was actually said was "How much are they?" and were advised "25 cents per volume". (R. 44a-47a; 50a; 32a-34a) Some also testified that it was considered their duty to *buy* a book so as to enable the police to arrest petitioners. (R. 40a-44a) (R. 32a-34a) Their conclusions or statements that they "bought" and that petitioners "sold" the literature do not change the real and true nature of the transactions and petitioners good work from charitable and benevolent activity to commercial business. So to permit would allow an unbeliever to go into the church building or synagogue and place a quarter in the contribution box or plate and later come into court and testify that he "bought" or "purchased" a sermon, in an effort to falsely label and convert the "church"

from a place of worship to a commercial store-house.

The undisputed evidence is, therefore, that six of the eight petitioners obtained the literature from their local congregations at 25 cents per volume and placed it with the public while preaching from house to house, receiving contribution in the same or less amount; therefore no "profit" was made on their transactions. That they gave away much literature free of charge. That two other petitioners obtained the literature at a cost less than offered to the public but that, due to expense and giving away more than half of the literature placed without receiving any contributions, they operated at a loss to themselves and preached without gain, profit or benefit to themselves. Therefore the conclusion of the Superior Court and the Mayor's Court that the activity was commercial is wholly without foundation in fact, reason or law.

The phonograph record "Snare and Racket" and the printed card used by petitioners to introduce the literature to the people do not support the conclusion or statement that there were any "sales" of literature in Jeannette on February 25, 1940, the date of petitioners' arrest. These instruments appear in the record at pages 60a-62a and 77a-78a.

8. *Special History of this Controversy.*

This particular ordinance has been the object of litigation in the courts, Federal and Commonwealth, for years, beginning in 1939 with the case of *Commonwealth v. Stewart*, 137 Pa. S. C. 445, 9 A. 2d 179. There the appeal was dismissed for technical reasons. Subsequently Stewart sought a writ of certiorari, by petition, from this Court to the Mayor's Court of Jeannette to review the judgment of conviction. Presumably the reason for this Court's denial of certiorari in 309 U.S. 674, 699 was that the case was disposed of on adequate non-federal grounds, that is to say, petitioner Stewart had not properly complied with recognized practice in the courts of Pennsylvania in taking his

appeal from the Mayor's Court to the Court of Quarter Sessions. Again in 1941 validity of this ordinance was questioned in *Ferree et al. v. Douglas, Keeper, etc.*, 21 A. 2d 472, where the Superior Court again refused to consider validity of the ordinance. On May 2, 1941, the United States District Court declared this ordinance unconstitutional as construed and applied to petitioners. *Douglas v. City of Jeannette et al.*, 39 F. Supp. 32. The City of Jeannette appealed the case to the United States Circuit Court of Appeals for the Third Circuit, and on August 31, 1942, that court reversed the judgment of the United States District Court, declaring that the writer of the opinion and another Circuit Judge agreed with the minority opinions of Chief Justice Stone and Justice Murphy in the case of *Jones v. Opelika*, supra, that the ordinance was unconstitutional but because forced to follow precedent they reluctantly reversed the District Court. See page 161 of the Record of No. 450, October Term 1942, on docket of this Court styled *Douglas et al. v. Jeannette et al.*, petition for writ of certiorari to review said judgment of said court.

B

Questions Presented

By reason of the foregoing, there were seasonably presented to the courts below and there are now presented to this Court for review substantial federal questions as follows:

(1) Is the ordinance in question unconstitutional on its face and as construed and applied because imposing a tax excessive, exorbitant and prohibitive in amount of \$10 daily or \$3,650^a annually in one section, and in another section for

^a The Superior Court does not mention the \$10 daily tax imposed for "peddling and hawking" but does refer to the \$1.50 tax on "canvassing for" and "soliciting" orders for future delivery. The complaint charged facts showing violation of both. The undisputed evidence shows that petitioners were not soliciting or canvassing for orders for future deliveries; therefore they were convicted for not having paid the \$10 daily peddler's and hawker's license tax.

a daily tax of \$1.50 or \$547.50 annually, upon the constitutionally secured rights of freedom of press and of worship of Almighty God?

(2) Does the ordinance as construed and applied and on its face unduly abridge petitioners' rights of freedoms of speech, of press and of worship of Almighty God contrary to the First and Fourteenth Amendments to the United States Constitution?

(3) Does the ordinance as construed by the Superior Court violate the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution by reason of discrimination against petitioners by holding that persons who call from house to house are subject to its terms and at the same time excluding therefrom persons of the same class who "peddle", "canvass", "solicit" and "sell" *upon the public streets of the city of Jeannette?*

C

Reasons Relied on for Allowance of Writs

The most grave and serious questions that can be presented to this Court are presented here, namely, whether or not this Court will permit to stand a judgment of a state court which approves of a revenue measure known as the license tax to be tied onto the unalienable rights of freedoms of speech, press and worship of Almighty God so as to abridge such rights contrary to the First and Fourteenth Amendments to the United States Constitution. The holding

*This question is presented here for the first time in this litigation. The question could not have been presented in the court below until after this distinction and discrimination were recognized by the Superior Court in its opinion. President Judge Keller says: "It has not been enforced so as to prevent appellants from freely selling, without license, their pamphlets and weekly publications on the streets (see *Com. v. Reid, supra*), but only as respects canvassing, soliciting and sales from door to door and house to house." *Commonwealth v. Reid*, 20 2d 841, 144 Pa. S. C. 569, makes the same discrimination with reference to a similar ordinance. It is therefore timely and proper to submit this question here for the first time inasmuch as this is the first opportunity for petitioners to make this claim in this litigation.

of the Superior Court is in conflict with applicable decisions of this Court involving this sort of ordinance. *Grosjean v. American Press Co.*, 297 U. S. 233; *Robbins v. Shelby County Taming Dist.*, 320 U. S. 489; *McGoldrick v. Berwind-White Co.*, 309 U. S. 33, 55-57.

Although the decision of the Superior Court relies upon a decision (at this writing unsettled and not yet final) by a bare majority of one of this Court in *Jones v. Opelika*, *supra*, yet it wholly fails to give effect to the spirit of the applicable exception announced in that same *Opelika* case. The Superior Court overlooks the fact that the ordinance contains excessive daily license tax fees of \$10 and \$1.50 respectively. Here these tax sums are complained of as being excessive. Although not specifically complained of as excessive in the Superior Court, because it was not considered necessary *thus* to complain of the taxes, it was complained of as a burden which permits the further claim of excessiveness. Since the new requirement of having to attack the tax as excessive was announced for the first time in the *Jones v. Opelika* case *after* the submission of this case in the Superior Court, the petitioners are now properly making here in this Court, for the first time, their claim that they are excessive. See footnote 4, page 13, *supra*.

The manner in which the Superior Court construed the ordinance by voluntarily contributing the statement that license tax laws are not applicable to the "sale" of literature *upon the streets* while they can be constitutionally enforced as to "sale" of literature *from house to house*, gives rise to the presentation to this Court of another point which petitioners did not have the opportunity of raising in the Superior Court. See also *Commonwealth v. Reid*, 144 Pa. S. C. 569, 20 A. 2d 841, holding unconstitutional a license tax ordinance applied to "sale" of literature *on the streets* of Clearfield, and which opinion says that ordinances are properly applicable to regulate house-to-house "sale" of literature. Since this holding constitutes an illegal discrimination and was announced for the first time in this case by the Superior

Court, it is timely to complain of same here for the first time. See footnote 4, page 13, supra.

Furthermore the Superior Court committed grave error in applying the rule announced in *Jones v. Opelika*, supra, because the undisputed evidence shows that the activity of petitioners is not "commercial", that they made no profit, operated at a loss by giving away *free of charge* more literature than each distributed to persons who contributed, and that the activity constitutes petitioners' way of worship of Almighty God.

The holding in the case at bar is directly contrary to prior decisions of the Superior Court in *Commonwealth v. Reid*, supra, where the rule was announced that the "sale" of literature did not warrant the violation of the Constitution by application of the license tax law. The decision of the Superior Court also conflicts directly with the holding of highest courts of other states, that the Federal Constitution is violated by applying the license tax laws to activity of Jehovah's witnesses. *State v. Greaves*, 112 Vt. 222, 22 A. 2d 497; *McConkey v. City of Fredericksburg*, 179 Va. 556, 19 S. E. 2d 682; and *Blue Island v. Kozul*, 371 Ill. 511, 41 N. E. 2d 515.

The *Jones v. Opelika* case as decided June 8, 1942, is not controlling because there this Court calls the license taxes involved "fees" whereas here it is admitted that the ordinance is a "revenue raising tax" measure exclusively. Purdon Penn. Stat., Title 53, par. 2198-2601, specifically describes this sort of ordinance as follows: "License Taxes for Revenue Purposes." Among other things it says: "The taxes assessed under this section shall be in addition to all other taxes. . . ."

It cannot be said that the license tax here is a regulatory fee, for it is not such in name or operation.

As to the principles of "substantial clog", "excessiveness" and discrimination, there are here presented substantial federal questions that have not heretofore been determined by this Court.

The questions presented are of nation-wide importance and vitally affect and concern fundamental rights of every inhabitant of the United States. The court below has decided a substantial and important federal question in a way which is in conflict with applicable decisions of this Court and has so greatly strayed from sound doctrine and the ordinary course of judicial proceedings under the Federal Constitution as to call for an exercise of this Court's power of review so as to correct and remedy the same.

It is submitted that this case is one calling for exercise of this Court's supervisory powers under Section 237 (b) of the Judicial Code [28 U. S. C. A. 344 (b)], and Rule 38, paragraph 5 (b), of the Rules of this Court.

WHEREFORE your petitioners pray that this Court issue eight writs of certiorari to the Superior Court of Pennsylvania, directing such court to certify to this Court for review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the cases numbered 1 to 8, inclusive, April Term 1943, and that the decrees and judgments of the Superior Court affirming the judgments of the Quarter Sessions Court refusing appeals from the convictions by the Mayor's Court of the City of Jeannette be here set aside and reversed, and that your petitioners be granted such other and further relief in the premises as to this Court may seem just and proper under the extraordinary circumstances.

ROBERT MURDOCK, Jr.

ANNA PERISICH

WILLARD L. MOWDER

CHARLES SEDERS

ROBERT LAMBORN

ANTHONY MALTEZOS

ANASTASIA TZANES

ELLAINE TZANES

By

HAYDEN C. COVINGTON

Their Counsel of Record

Petitioners

SUPPORTING BRIEF

Assignment of Errors

The petitioners assign the following errors in the record and proceedings of said cause:

The Superior Court committed fundamental error in affirming the judgment of the trial court because

(1) The ordinance in question is unconstitutional on its face and as construed and applied because it imposes a revenue raising license tax that is excessive, exorbitant and prohibitive in amount of \$10 daily or \$3,650 annually in one section and in another section for tax of \$1.50 daily, \$7 weekly, upon constitutionally secured rights of freedom of press and of worship of Almighty God?

(2) The ordinance in question on its face and as construed and applied abridges petitioners' rights of freedoms of speech, of press and of worship of Almighty God contrary to the First and Fourteenth Amendments to the United States Constitution?

(3) The ordinance as construed by the court below so as to exclude from its terms persons who sell upon the streets and at the same time include within its terms the same class of persons who sell from house to house is unreasonable discrimination, thus violating the *due process* and *equal protection* clauses of the Fourteenth Amendment to the United States Constitution.

ARGUMENT

For the purpose of saving time and space, reference is made to pages 14 to 34 of the petition for writ of certiorari and supporting brief in case No. 450 October Term 1942, styled *Douglas v. Jeannette*, for an extended discussion as to the validity of this ordinance.

A discussion of the reasons expressed by the Pennsylvania Superior Court in its opinion construing this ordinance in the case at bar is necessary. Such will throw light upon case No. 450, above referred to, and give the Court a broader view of the questions presented in both these cases.

The Superior Court has properly declared that an ordinance of this sort providing for payment of a license tax as a condition precedent to "sale" of literature *upon the streets* is unconstitutional and void. That court held that the constitutional guarantee of freedom of press was not confined to giving away literature *free of charge* but also extended to literature which was sold. The case referred to is *Commonwealth v. Reid et al.*, 144 Pa. S. C. 569, 20 A. 2d 841, involving the activity of Jehovah's witnesses. There as well as in the case at bar it is said that when such activity is carried on from *house to house* the state may regulate, prohibit or impose a license tax revenue law upon one so exercising fundamental personal rights (from *house to house*). That court supports this conclusion upon its own prior decision in *Pittsburgh v. Ruffner*, 134 Pa. S. C. 192, 4 A. 2d 224, holding valid a vicious censorship-license-permit ordinance identical in terms with the Irvington (New Jersey) ordinance knocked down in *Schneider v. State*, 308 U. S. 147. Since this Court's decision in the *Schneider* case the Superior Court has consistently refused to admit that its holding in *Pittsburgh v. Ruffner*, *supra*, is repugnant to the *Schneider* case.

The practice of calling from house to house is not a crime, a nuisance, or a "business" which imperils the public interest. While it can be regulated as to reasonable times, it cannot be prohibited. If the house-to-house activity con-

sists of distributing or "selling" literature it cannot be taxed because it is a direct burden. In the *Schneider* case this Court held that the most appropriate way of distributing and circulating publications was from house to house. There the Court also held that reasons advanced to justify the regulation or burdening of other personal activity, such as selling ordinary articles of goods and merchandise, do not justify suppression or censorship of the exercise of rights vital to the maintenance of democratic institutions such as circulation or "sale" of literature.

While legislative judgment condemning, prohibiting, regulating and taxing certain occupations because of supposed public interest or evil tendencies cannot ordinarily be questioned under the 14th Amendment securing due process of law, yet such rule would not and can not obtain and prevail where the activity or occupation is one established or specifically protected against abridgment by the Constitution. Circulation and distribution of literature, either gratis or when simultaneously receiving money contributions, is among practices so protected. Consequently the conveniences of the housewife not being annoyed by calls or knowing the reputation of persons who call from house to house are not sufficient reasons to justify abridgment of the freedoms of press, speech and worship of Almighty God. *Schneider v. State*, supra.

The business or occupation of going from house to house selling merchandise is a lawful business and is not a public nuisance and therefore cannot be prohibited. The courts have uniformly so held. *Smith v. Texas*, 233 U. S. 630, 636. Nor can a lawful business be subjected to unreasonable regulations under the police power having no reasonable relation to the safety, welfare and morals of the public. *State v. Paille*, 90 N. H. 347..

It is not contended that the ordinance here is a regulatory measure. The statute authorizing it is a revenue raising

²*City of Mt. Sterling v. Donaldson Baking Co.*, 287 Ky. 781, 155 S. W. 2d 237..

measure. The ordinance does not provide for time and place of peddling or selling. Once the license tax is paid and permit obtained one may go any place at any time within the city to "annoy" all whom he meets from house to house without being required to answer to the authorities under the ordinance.

The ordinance does not purport to deal with any abuse of privilege in the making of said house-to-house calls, nor does it purport to serve as a revenue measure for the sole purpose of providing additional police protection for the distributor or the public. It is a revenue measure exclusively, without any relation whatsoever to any regulatory or police powers of the city. *Blue Island v. Kozul*, 379 Ill. 511, 41 N. E. 2d 515; *State v. Greaves*, 112 Vt. 222, 22 A. 2d 497. If it be considered a regulatory law, it immediately becomes a penalty upon the exercise of a constitutional right. *Bailey v. Drexel*, 259 U. S. 20.

The opinion ignores entirely the claim that the ordinance is unconstitutional as construed and applied to the admitted exercise of constitutional rights and fails to weigh the substantiality of the reasons advanced in support of the law with the fundamental guarantees of freedom of press and of worship of Almighty God. Whether an ordinance is constitutional or unconstitutional depends on the facts to which it is applied. *Concordia Fire Ins. Co. v. Illinois*, 292 U. S. 535, 545. Here the undisputed evidence shows the exercise of fundamental rights of press activity and worship of Almighty God is involved. There does not appear to be any ground justifying an invasion of such rights; therefore, here application of the ordinance is unconstitutional.

The declared guaranties of freedoms of speech, press and worship of Almighty God are statements by the people of this nation speaking directly to those who govern, as well as to the governed. Those guaranties cannot be made to yield to the weaker, and at most indirect and oftentimes unauthorized, expression of the people through the legislature.

The burden is upon the Commonwealth to establish the

grounds or reasons for abridging here the freedoms of speech, press and worship. It has failed to discharge such burden; therefore, the license tax imposed here must fall as unconstitutional.

When considering the constitutional right of one to "sell" literature *on the streets* the Superior Court held that the fact that it is "sold" or is given away "free of charge" makes no difference; but, on the other hand, that court holds that "selling" literature *from house to house* makes applicable the peddler's and hawker's license-tax law in question. There does not appear to be any reason for this distinction, especially since the law is not regulatory in nature.

Petitioners' activity is charitable and benevolent. It is not contended that they held back the literature at any home for want of a money contribution. The evidence shows that they gave away *free of charge* as many pieces of literature to non-contributors as contributors of money had accepted from them, and that each petitioner operated at a financial loss. The evidence shows that petitioners contribute their own money earned from other sources to maintain themselves in doing this work. Contributions which petitioners accept from recipients of literature are not sufficient to maintain the work. There was no finding by the Superior Court nor by the Mayor's Court that the activity was commercial or that a profit was made. The entire case is based on the proposition that a "sale" was made, contrary to the terms of the ordinance, when contributions were accepted as the literature was distributed. This is not competent or sufficient.

The charitable nature of the activity is not changed by the fact that the one contributing the money *thought* he was "buying" a sermon, or *thought* that it was "sold" to him. An examination of the entire evidence shows that the activity is charitable and non-profit. Consequently if it is unconstitutional to require a license tax upon giving literature away free of charge it is equally void to require a tax on charitable activity of distributing literature.

The Superior Court stumbled in a consideration of the activity of petitioners. That court says that petitioners should limit their activity to assembly for worship in the homes or meeting places. In other words, that court deems petitioners' practice of preaching apostolically from *house to house* to be improper, *unreasonable*. Courts have no authority to hold that this *manner* of preaching is improper or unreasonable. If the practice does not violate the law of morals, invade the property rights of others, present a clear and present danger of breach of the peace, or actually cause such breach, it cannot be interfered with by the courts. To suffer any civil magistrate to determine what is and what is not proper worship of the Creator would be to rule out the *way* of preaching employed by Christ Jesus and His apostles. *Reynolds v. United States*, 98 U. S. 145, 162.

The proper attitude of the courts toward this fundamental liberty and its exercise under the Constitution was aptly expressed by Circuit Judge Parker speaking for a statutory three-judge district court in *Barnette et al. v. West Virginia State Board of Education* (D. C., S. D., W. Va.) October 6, 1942, when that high federal court refused to follow the *Gobitis* flag case and declared unconstitutional the flag-salute regulation as applied to Jehovah's witnesses in that state. In that case he says:

"Courts may decide whether the public welfare is jeopardized by acts done or omitted because of religious belief; but they have nothing to do with determining the reasonableness of the belief. That is necessarily a matter of individual conscience. There is hardly a group of religious people to be found in the world who do not hold to beliefs and regard practices as important which seem utterly foolish and lacking in reason to others equally wise and religious; and for the courts to attempt to distinguish between religious beliefs or practices on the ground that they are reasonable or unreasonable would be for them to embark upon a hopeless

undertaking and one which would inevitably result in the end of religious liberty. There is not a religious persecution in history that was not justified in the eyes of those engaging in it on the ground that it was reasonable and right and that the persons whose practices were suppressed were guilty of stubborn folly hurtful to the general welfare. The fathers of this country were familiar with persecution of this character; and one of their chief purposes in leaving friends and kindred and settling here was to establish a nation in which every man might worship God in accordance with the dictates of his own conscience and without interference from those who might not agree with him. The religious freedom guaranteed by the 1st and 14th Amendments means that he shall have the right to do this, whether his belief is reasonable or not, without interference from anyone, so long as his action or refusal to act is not directly harmful to the society of which he forms a part."

The suggestion and argument contained in the majority opinion of this Court in the case of *Jones v. Opelika*, supra, that the courts are precluded by the action of local legislative authorities in deciding when rights of freedoms of press and worship must yield to the exercise of the police or taxing power, nullify entirely the guaranties contained in the 1st and 14th Amendments.

The Constitution is not worth the paper it is written on if no legislature (municipal and state) or police court were bound to respect it except in so far as it chimes with the policy such local governing factor might choose to follow. The Bill of Rights is not a mere guide for the exercise of legislative discretion, but is a part of the fundamental law of the land containing express restraints upon the governing power of the nation, states and municipalities.

With the advance of the totalitarian spirit in other parts of the world in recent years there has been a tendency in

republics and democracies to drift aimlessly away from the 'mooring cables' serving as checks and balances of such popular governments. In this America has been no exception. The forefathers who wrote the Constitution clearly intended and stated that its function was to secure "the blessings of liberty to ourselves *and our posterity*". This Court was established to keep the "ship of state" anchored in its proper position and to prevent encroachments upon the "blessings of liberty". It has thus served as a "keystone" of the government.

During the first sixty-eight years of this Court's existence it was not called upon to ~~declare a law unconstitutional~~. This was because legislators and executives, faithful to their oaths of office, exercised only the power granted to them. Failure of legislators and executives to hold themselves in check has many times caused this Court rightly to exercise its kingly power of restraint granted under the Constitution.

Throughout the history of the Court there has been maintained the proper attitude of non-interference by government with private property rights, business and personal activity, except where absolutely necessary in the interest of public welfare under the *police power*. Until recently the attitude was always assumed that the *Government* was a means to an end, to wit, liberty and happiness of the *governed*. The end has never been *supremacy* of the state.

It is noticed that since 1935, especially with reference to private business and property rights, the policy has changed from *non-interference* by government to *regulation and control* by government. This may be necessary as a means of following the economic life of the nation and supplying its needs and is not questioned or debated here. We now find many ways of the economic life of the nation regulated, controlled under a centralization of power in government. While the needs may justify such a change in the economic affairs of life, there certainly is no showing or justification as to any need for a similar change with reference to the exer-

cise of fundamental *civil rights* of the inhabitants of the land. Any turns toward regulation of *civil rights* as are property rights must be *halted* now. Such fundamental personal rights, guaranteed as they are under the first amendment and secured from state invasion by the 14th Amendment, cannot be infringed by any law without amendment of the Constitution, except in cases where the conduct presents a clear and present danger which is immediate against the public peace of the state, the morals of the people, and their property rights, or advocates the overthrow of the government by force and violence. Even when dealing with such abuses the law employed must be directed at the abuse and a general law prohibiting the exercise of such rights cannot be enacted or applied.

Taxes imposed on the exercise of constitutional rights find no justification whatsoever in the Constitution, law or reason. We submit that in the *Jones v. Opelika* case this Court cut the 'anchoring cable' of the Constitution and is rapidly drifting from safe *waters of liberty* to tempestuous danger permitting standardless, indiscriminate and capricious regulation and control and ultimate absolute suppression of fundamental personal rights. The opinion by the Pennsylvania Superior Court in this case is further evidence of this Court's error in the *Jones v. Opelika* and companion cases. We refer to the dissenting opinions of Chief Justice Stone and Justice Murphy in those cases.

It is fitting to call to the attention of the Court an appropriate former expression, *Herndon v. Lowry*, 301 U. S. 242, where it is said:

"The power of a state to abridge freedom of speech . . . [press and worship of Almighty God] is the exception rather than the rule and the penalizing even of utterances of a defined character must find its justification in a *reasonable apprehension of danger to organized government*. The judgment of the legislature is not unfettered. The limitation upon individual liberty must

have appropriate relation to the safety of the state.
[Italics and bracketed words added]

The opinions of the Superior Court in the case at bar and in the case of *Commonwealth v. Reid*, supra, expressly hold that license-tax laws when applied to sale or circulation of literature upon the streets are unconstitutional; but that when applied to the same activity done from house to house they are constitutional. This distinction is without reason or justification and is unreasonable. It is directly repugnant to *Schneider v. State*, supra. The ordinance as construed by the court below discriminates unreasonably against petitioners who distribute literature from house to house. The holding of that court in this respect violates the due process and equal protection clauses of the Fourteenth Amendment. *State v. Paille*, 90 N. H. 347; *Hanover Fire-Ins. Co. v. Harding*, 272 U. S. 494, 495; *Truax v. Corrigan*, 257 U. S. 312, 331-333; *Barbier v. Connolly*, 113 U. S. 27, 31-32; *Southern Ry. Co. v. Greene*, 216 U. S. 400, 418; and *Quaker City Cab Co. v. Pennsylvania*, 277 U. S. 289. See also *Easton v. Easton Beef Co.*, 5 C. C. 68, 5 Lane. 180, 1 North 125 (1888), and *Wagner v. Covington*, 251 U. S. 95, where the license-tax ordinance was found to discriminate in favor of intrastate as against interstate transactions.

The first time that this particular ordinance was judicially construed by a Pennsylvania court so as to exclude and exempt from its terms peddling, hawking and selling upon the streets, and that thus applied it would be unconstitutional, was when the Superior Court filed its opinion in this cause on July 23, 1942. No person and no court had contended that its application was thus limited or that discrimination of the sort was permitted. It is strange that the court would so hold in the face of the express provisions of Section II of the ordinance specifically prohibiting peddling without a license "upon the streets of said Borough by outcry or solicitation of the people upon the streets" (R. 8a, 20a). Since this new theory or construction was given the

ordinance for the first time by the Superior Court, petitioners are now warranted in urging for the first time that the ordinance as thus construed violates the equal protection and due process clauses of the Fourteenth Amendment. Under similar circumstances the late raising of a federal question was approved and permitted by this Court in *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U. S. 673.

The Superior Court says this is a revenue law and the state statutes⁶ fix authority for passage of ordinances by Pennsylvania cities requiring "license taxes for revenue purposes".

Since the license tax here involved is described by statute and admitted by the respondent and the court below as being a "revenue raising" tax exclusively and not a regulatory fee for policing, etc., the Superior Court of Pennsylvania has blindly pushed the sacred and beloved constitutionally protected rights of freedom to worship Almighty God and freedom of the press into the pathway of the gigantic taxing machinery of the state, which machinery and its operation is beyond the control of the judiciary.⁷ If the decision of the Superior Court is permitted to stand, then truly it can be said that the Constitution is not worth the paper it is written on and that a way has been discovered to circumvent and escape the injunctions contained in the Constitution against abridgment by the state or nation of constitutionally secured and guaranteed freedoms for which the forefathers fought and died.

We again call this Court's attention to the case of *Grösjen v. American Press Co.*, 297 U. S. 233, where a license tax imposed on newspapers "selling" advertising and oper-

⁶ Third Class City Act of June 23, 1931, P. L. 932, Art. XXVI, s. 2601 and amendments; Purdon Statutes, Title 53, s. 2198-2601 cited by Judge Keller as authority for the ordinance in question.

⁷ See *Veazie Bank v. Fenno*, 8 Wall. 533; *McCray v. United States*, 195 U. S. 27; *Flint v. Stone Tracy Co.*, 220 U. S. 107, and other cases holding that if it is constitutional to apply a tax in any amount, it is beyond the power of the courts to save the thing or person subject thereto because of its size, excessiveness or amount so as to prohibit.

ated by *commercial* concerns was declared void "because of its direct tendency to restrict circulation"—Chief Justice Hughes in the case of *Lovell v. Griffin*, 303 U. S. 444. In that case the opinion among other things says:

"In the light of all that has now been said, it is evident that the restricted rules of the English law in respect of the freedom of the press in force when the Constitution was adopted were never accepted by the American colonists, and that by the First Amendment it was meant to preclude the national government, and by the Fourteenth Amendment to preclude the states, from adopting any form of previous restraint upon printed publications, or their circulation, including that which had theretofore been effected by these two well known and odious methods."

"This court had occasion in *Near v. Minnesota*, supra, . . . and the Court was careful not to limit the protection of the right to any particular way of abridging it. . . ."

It is to be noticed that in that case there was no requirement on the part of this Court as a condition to questioning the law that the newspapers engaging in commercial advertising under it should attack the tax as being excessive. While this Court could have decided that case on the grounds of discrimination, it did not do so but seized the real question in the case and disposed of the case on the ground that freedom of the press was abridged by the *license tax*.

° The *Grosjean* case is directly in point with the case at bar and the conflict between it and the opinion of the Superior Court in this case is ground for granting the petition for writs of certiorari.

As additional ground for granting the writs we urge the direct conflict with the case of *Lovell v. Griffin*, supra. In that case the ordinance required a license for which no fee or tax must be paid. Here the license is required but before it can

he had one must pay the tax. He must pay tribute to Caesar or purchase privileges guaranteed by the Constitution without charge or price before he can operate or exercise them. This leaves the right to exercise such fundamental personal rights only to him who is wealthy and rich enough to buy his constitutional privileges or give all his literature away free of charge. The *license* feature in this case is also objectionable *in addition to the tax* and nullifies the ordinance under the *Lovell* case, *supra*. To say that the case at bar is distinguishable because of the adding of the tax to the license reminds us of this expression: "To give such magic to the word 'tax' would be to break down all constitutional limitation of powers of Congress [constitutional guarantees of personal freedoms] and completely wipe out the [people's liberty] sovereignty of the states."—Chief Justice Taft in *Bailey v. Drexel*, 259 U. S. 20. [Bracketed words added]

Conclusion

It is submitted that this case is one calling for the exercise by this Court of its supervisory powers under Section 237 (b) of the Judicial Code [28 U. S. C. A. 344 (b)] and Rule 38, paragraph 5 (b), of Rules of this Court. To that end this petition for writs of certiorari should be granted so as to correct the assigned errors committed by, and the judgments rendered by, the Superior Court of Pennsylvania and the Mayor's Court, against petitioners, which judgments should be reversed.

Respectfully submitted,

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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

Nos. 480-487

**ROBERT MURDOCK, JR., ANNA PERISICH,
WILLARD L. MOWDER, CHARLES SEDERS,
ROBERT LAMBORN, ANTHONY MALTEZOS,
ANASTASIA TZANES, and ELLAINE TZANES,**
Petitioners

v.

COMMONWEALTH OF PENNSYLVANIA
(City of Jeannette)
Respondent

**ON CERTIORARI TO THE
SUPERIOR COURT OF PENNSYLVANIA**

PETITIONERS' BRIEF

HAYDEN C. COVINGTON
Attorney for Petitioners

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This Court should hold that the ordinance is void and unconstitutional as construed and applied to petitioners' activity because it abridges and unduly burdens by taxation the exercise by petitioners of their rights of freedom of speech, press and worship of ALMIGHTY GOD, as His ministers preaching from house to house, contrary to the First and Fourteenth Amendments to the United States Constitution

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1) The First and Fourteenth Amendments to the United States Constitution must be very liberally interpreted so as to give effect to the intention of the framers of the instruments and of the people in adopting them; therefore the Court cannot define "religion" so as to exclude petitioners' activity from the protecting shield

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- 2) The activity of petitioners in distributing literature containing sermons on the Bible is their way of preaching the Gospel and worshipping ALMIGHTY GOD and must be regarded as such by this Court 22
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

Nos. 480-487



ROBERT MURDOCK, JR., ANNA PERISICH,
WILLARD L. MOWDER, CHARLES SEDERS,
ROBERT LAMBORN, ANTHONY MALTEZOS,
ANASTASIA TZANES, and ELLAINE TZANES,
Petitioners

v.

COMMONWEALTH OF PENNSYLVANIA
(City of Jeannette)
Respondent



ON CERTIORARI TO THE
SUPERIOR COURT OF PENNSYLVANIA

PETITIONERS' BRIEF

Opinions Below

The opinion of the Superior Court is reported in 149
Pa. S. C. 175 and is also unofficially reported in 27 A. 2d
666.

Jurisdiction

Jurisdiction of the Supreme Court of the United States

is invoked under Section 237 (b) of the Judicial Code [28 U. S. C. A. 344 (b)].

Timeliness

The judgments of the Superior Court of Pennsylvania were rendered and entered July 23, 1942. (R. 122-125) Such judgments became final on September 28, 1942, when petitions for leave to appeal to the Supreme Court of Pennsylvania were denied and allocatur refused. R. 126-135.

The petitions for writs of certiorari were filed within three months from the date of refusal of allocatur.

The Statute

The legislation, the constitutionality and validity of which, as construed and applied to petitioners, is here drawn in question, is an ordinance, Number 60 of the City of Jeannette, Pennsylvania, which reads as follows:

"City of Jeannette, Pa. Ordinance No. 60

An Ordinance regulating the canvassing for or soliciting of orders for goods, paintings, pictures, wares or merchandise of any kind within the Borough of Jeannette, and the delivery of such articles under orders so obtained or solicited and requiring all person or persons so engaged in canvassing, soliciting or delivering, to first procure from the Burgess a license to transact said business, and also regulating the hawking, vending of fruits and other merchandise upon the streets by public outcry or by solicitation and requiring all person or persons thus engaged to first obtain a license from the Burgess.

Be It Ordained and enacted by the Borough of Jeannette in Council assembled and it is hereby or-

dained and enacted by the authority of the same.

Section I. That all persons canvassing for or soliciting within said Borough, orders for goods, paintings, pictures, wares, or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact such business and shall pay to the Treasurer of said Borough therefor the following sums according to the time for which said license shall be granted.

For One day \$1.50, for One week seven \$7.00 dollars, for two weeks twelve \$12.00 dollars, for three weeks twenty \$20.00 Dollars, provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.

Section II. That all persons huckstering, peddling, or selling fruits, goods or other merchandise upon the streets of said Borough by outcry or solicitation of the people upon the streets or thoroughfares of said Borough shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor, the sum of ten \$10.00 Dollars per day. Any person or persons failing to obtain a license as required by this ordinance shall, upon conviction before the Burgess or Justice of the Peace of said Borough forfeit and pay a fine not exceeding one hundred \$100.00 Dollars, nor less than the amount required for the license for such person or persons together with the costs of suit, and in default of payment thereof, the defendant or defendants may be

¹ Section one of the ordinance providing for payment of a tax of \$1.50 per day applies only to *canvassing and soliciting* of orders or delivering under orders and does not apply to *peddling or huckstering*. It is not contended that petitioners solicited orders. They were prosecuted for peddling and huckstering without payment of the \$10 daily license. See record in *Stewart v. Jeannette*, 309 U. S. 674, 699, No. 722, October Term 1939, certiorari denied.

sentenced and committed to the Borough lock-up for a period not exceeding five (5) days or to the County Jail for a period not exceeding thirty (30) days.

Adopted by the Town Council of the Borough of Jeannette this first day of March, A.D. 1898.

D. E. Carle, President of Council.

Attest: Geo. S. Kirk, Secretary.

I, J. Claire Manson, City Clerk, of the City of Jeannette, Pennsylvania, hereby certify that the foregoing is a true and correct copy of Ordinance No. 60 of the Borough of Jeannette (now the City of Jeannette), Pennsylvania.

J. Claire Manson, City Clerk.

[Seal]

The entire text of the above ordinance appears in the record. R. 8a-9a, 20a-21a.

Special History of this Controversy

This particular ordinance has been the object of litigation in the courts, Federal and Commonwealth, for years, beginning in 1939 with the case of *Commonwealth v. Stewart*, 137 Pa. S. C. 445, 9 A. 2d 179. There the appeal was dismissed for technical reasons. Subsequently Stewart sought a writ of certiorari, by petition, from this Court to the Mayor's Court of Jeannette to review the judgment of conviction. Presumably the reason for this Court's denial of certiorari in 309 U. S. 674, 699 was that the case was disposed of on adequate non-federal grounds, that is to say, petitioner Stewart had not properly complied with recognized practice in the courts of Pennsylvania in taking his appeal from the Mayor's Court to the Court of Quarter Sessions. Again in 1941 validity of this ordinance was questioned in *Ferree et al. v. Douglas, Keeper, etc.*, 145 Pa. S. C. 477, 21 A. 2d 472, where the Superior Court again refused to consider validity of the ordinance. On May 2, 1941, the

United States District Court declared this ordinance unconstitutional as construed and applied to petitioners. *Douglas v. City of Jeannette et al.*, 39 F. Supp. 32. The City of Jeannette appealed the case to the United States Circuit Court of Appeals for the Third Circuit, and on August 31, 1942, that court (130 F. 2d 652) reversed the judgment of the United States District Court, declaring that the writer of the opinion and another Circuit Judge agree with the minority opinions of Chief Justice Stone and Justice Murphy in the case of *Jones v. Opelika*, 316 U. S. 584-624 (judgments vacated Feb. 15, 1943, and cases restored to docket for reargument at March 1943 session), that the ordinance was unconstitutional but because forced to follow precedent they reluctantly reversed the District Court. See page 161 of the Record of No. 450, October Term 1942, on docket of this Court styled *Douglas v. Jeannette*.

Statement

Petitioners were each charged by Information filed in the Mayor's Court of the City of Jeannette, February 25, 1940, with an alleged violation of the foregoing ordinance. In the Information, among other things, it is alleged that:

"on or about the 25 day of February A. D. 1940, Defendant aforesaid did then and there unlawfully solicit sales of books and pamphlets, and did sell and deliver the same from door to door in the City of Jeannette, without a license, all of which is contrary to an Ordinance No. 60 Sec. 1' [R. 10a, 22a.].

Jehovah's witnesses were first arrested in the City of Jeannette for preaching the gospel from house to house on March 12 and 19, 1939. (See Transcript of Record in *Douglas v. Jeannette* No. 450 Oct. Term 1942, pages 28-32.) In order to clarify the matter and remove any possible misunderstanding, Charles R. Hessler, supervising minister

for Jehovah's witnesses in the Pittsburgh area, delivered to the Mayor and Chief of Police of Jeannette a letter explaining that Jehovah's witnesses were ministers of the gospel, preaching the gospel by distributing Bible literature from house to house and were calling to find people of good will toward Almighty God Jehovah, as commanded in the Scriptures. (Isaiah 61:1-3; Ezekiel 9:4; Matthew 24:10; 10:7, 13; Luke 10:5, 6; John 18:37; Acts 20:20; 1 Peter 2:9, 21) In said letter the City of Jeannette was advised as follows:

"We who engage in this work come to your community not to canvass or solicit, nor to peddle goods, wares or merchandise. We do not ask for a permit, for the reason that the Almighty Creator, JEHOVAH, whose law is above all laws, commands us, as His witnesses, to preach the gospel of His kingdom; therefore to ask any human creature for a permit would be an insult to Jehovah and a violation of our covenant with Him, and would result in our everlasting destruction.—Acts 3:22, 23; Acts 4:19, 20; Acts 5:34-39."

[Plaintiffs' Exhibit 2 in *Douglas v. Jeannette*, No. 450

Oct. T. 1942. See pages 29 and 30 of the record in *Douglas v. Jeannette*, No. 450 Oct. T. 1942.]

Thereafter arrests continued from such time to May 13, 1941, the date of the injunction decree entered in the United States District Court. See pages 135 to 145 of the record in *Douglas v. Jeannette*, No. 450, Oct. T. 1942.

Statement of Facts²

The occupation of each petitioner is ordained minister of Jehovah God, representing the Watch Tower Bible & Tract Society, a Pennsylvania corporation, and, as such representative, certified by said Society to be one of Jehovah's witnesses preaching the gospel of God's kingdom, The Theocracy. A sample of the credential of ordination carried by each appellant was received in evidence. (R. 77a) As such ordained ministers, appellants called from house to house presenting to the people the gospel in printed form. In this they acted exactly as did the Lord Jesus Christ and His apostles, who taught publicly and from house to house.—Luke 8: 1; 13: 26; Acts 5: 42; Acts 20: 20; 1 Peter 2: 9, 21.

Each petitioner approached the homes of the people of Jeannette in an orderly and proper manner by knocking at the door or ringing the doorbell. When the householder or occupant arrived at the door the caller presented his 'testimony card', entire text of which appears in the Record at page 78a.

Each petitioner also offered to play (and did play when permitted) a record entitled "Snare and Racket"; showing the clear distinction between "religion", which is demonism, and Christianity, which is the true worship of Almighty God. That phonograph record was reproduced in open court and appears transcribed in the record. R. 60a to 62a.

When the householder had fully considered the card or record the caller exhibited the literature, a book entitled "Salvation" and certain booklets. If the householder desired the literature he could immediately accept and keep it. If

² Since this Court, in *Jones v. Opelika*, supra, said that it desires to know the income and disbursements from petitioners' activity it is necessary to go into a long detailed analysis of evidence in the record.

financially able and willing, he could at the same time contribute the sum of twenty-five cents to help print and distribute more like literature. If unable at the time to contribute any sum, he could nevertheless accept and retain the proffered literature, *gratis*, upon condition that he agree to study its contents with his Bible.

Contents of said literature related exclusively to a revelation of God-given prophecies of the Bible as such are being fulfilled in modern times, showing that this is the time of "the end" foretold in Holy Writ, as evidenced by the rapid advance of the Devil's dictator-totalitarian rule projected and pushed by a giant totalitarian religious organization which is bent on achieving *world domination* by destroying all democracy from off the earth and ruling the peoples of all nations with an iron hand; and that the people's only hope of escape from such scourge is "the battle of that great day of God Almighty" at Armageddon (Revelation 16: 13-16), now near, when JEHOVAH, the Almighty God, will completely destroy His and mankind's chief enemy, Satan, and also Satan's entire organization invisible and visible consisting of commercial, political and ecclesiastical elements, and which destructive ACT OF GOD shall be immediately followed by continuing growth and irresistible expansion of His Theocratic Government which alone shall prevail eternally in all the universe, to bring peace, joy, prosperity, happiness and endless life to those on earth who survive that most terrible battle of all time, and eventually also to many who have died in centuries past and who shall by the power of the Creator be raised from the dead to live in perfection upon earth in obedience to the righteous laws of Jehovah's Government under His King Christ Jesus and God's resurrected "princes in all the earth".—Isaiah 32: 1; Micah 5: 4, 5; Psalm 45: 16.

Upon any householder's indicating unwillingness to read the caller's card, listen to the phonograph or obtain the literature, the caller would quietly pass on to the next house.

The evidence failed to show, and it is not contended, that

petitioners 'trespassed' or were in any case offensive or annoying in their method of presentation. They were quiet and courteous in their dealings with everyone whom they approached in Jeannette.

The undisputed evidence showed that the bound books entitled "Salvation" and "Creation" distributed by petitioners were published and distributed by the Watch Tower society for cost of 20 cents per volume to local organizations or congregations of part-time workers and ministers referred to in the testimony as "companies". (R. 101a-102a; 67a) That the local congregations or companies had expenses of maintaining a meeting hall or place of worship. That the society permits the local organization to make its own rules as to amount to be contributed by the ~~local ministers~~ engaged in such part-time work. That such *companies* whose members had been assigned the City of Jeannette as territory to preach in had established the rate of 25 cents per volume to be contributed by each member or minister for the literature which he distributed from house to house. (R. 83a; 93a; 101a-102a) That such assessed figure included a difference of 5c per volume to defray local meeting hall expense (R. 87a) and did not permit the making of any profit whatsoever on the literature placed. (R. 101a) That the publisher or minister had to bear his own expense of travel to and from territory and cost of any books or literature placed with the people without contribution, which expense was not taken care of from money received from books placed but by money earned by the petitioners in their secular activity. Thus each petitioner operated at a loss. R. 64a; 66a.

The exception to the above arrangement was the petitioner Robert Lamborn, a resident of Cadiz, Ohio, and a member of the Cadiz congregation of Jehovah's witnesses, who was visiting in Jeannette and vicinity on the day in question. He obtained his literature from the Cadiz congregation. This congregation let the books to members of the congregation, ministers, for distribution from house to

house on the basis of 20 cents per volume paid by each minister. He also paid three cents per volume for the booklet "Government and Peace" which he gave free of charge with every bound volume placed and to persons too poor to contribute. That he gave away many volumes of literature to persons who contributed no money. That on the whole he spent more money than he took in from the public and what he contributed to the work exceeded his expenses. In addition to this he has his expense of travel, etc., for which he receives no reimbursement. Lamborn is a farmer and earns his living from the soil. (R. 73a; 65a-76a) He did not make any profit from literature placed in Jeannette or elsewhere. R. 76a.

The other exception was petitioner Earl Singer, the only full-time publisher, "pioneer minister," who said that the *society* had made arrangements for full-time ministers to receive the books for five cents each (a discount of fifteen cents under cost of publication) or one-fourth of the cost price paid by the congregations to the society because they do not ordinarily have support from secular activity as does the part-time minister. This discount on each book was a contribution from the society to aid the full-time publisher to defray expense of operation and to bear the expense of giving away literature free. In his own case, however, Singer testified that he made his living and obtained necessary financial support from money received from his trucking business which he owned and that he did not make any money whatsoever from his preaching activity from house to house because in the long run he gave away more literature free than what he distributed to those who contributed. That over a month's time his expense in preaching far exceeded the amount of money received from contributions. R. 100a-105a.

The case of Charles Seder is typical of all the *part-time* ministers, petitioners. He contributes 25c per book to his local congregation and distributes the books from house to house at the same contribution. During January, 1940, the

month prior to the trial in the Mayor's Court he had distributed 37 bound books, receiving contributions only from persons who accepted half of that number. His secular occupation was as a tin-mill worker. He preached from house to house on Sundays. R. 90a-96a.

While the testimony of the witnesses for the Commonwealth is that some of them "bought" literature from some of the petitioners for "25c" they uniformly admitted that what was actually said was "How much are they?" and were advised "25 cents per volume". (R. 44a-47a; 50a; 32a-34a) Some also testified that it was considered their duty to *buy* a book so as to enable the police to arrest petitioners. (R. 40a-44a) (R. 32a-34a) Their conclusions or statements that they "bought" and that petitioners "sold" the literature do not transform the real, true *nature of the transactions* and petitioners' good work from charitable and benevolent activity to commercial business. So to view petitioners' *ministerial work* would allow for an unbeliever to go into any church building or synagogue and place a quarter in the contribution box or plate and later come into court and testify that he "bought" or "purchased" a sermon, in an effort to falsely label and transform the "church" from a place of worship into a commercial store-house.

The undisputed evidence is, therefore, that six of the eight petitioners obtained the literature from their local congregations at 25 cents per volume and placed it with the public while preaching from house to house, receiving contribution in the same or less amount; therefore no "profit" was made on their transactions. That they gave away much literature free of charge. That two petitioners obtained literature at a cost less than the maximum sum contributed by a recipient-householder, but that, due to expense and giving away more than half of the literature placed without receiving any contributions, they operated at a loss to themselves and preached without pecuniary gain, profit or benefit to themselves. Therefore the conclusion of the Superior Court and the Mayor's Court that the

activity was commercial is wholly without foundation in fact, reason or law.

The phonograph record "Snare and Racket" and the printed card used by petitioners to introduce the literature to the people do not support the conclusion or statement that there were any sales of literature in Jeannette on February 25, 1940, the date of petitioners' arrest. These instruments appear in the record at pages 60a-62a and 77a-78a.

History of Proceedings and Federal Questions Raised Below

MAYOR'S COURT PROCEEDINGS

In the Mayor's Court at the close of the Commonwealth's case and at the close of the entire case petitioners duly filed their motion to dismiss on the ground, among other things, that the ordinance as applied deprived them of their rights of freedoms of press, speech and worship of Almighty God contrary to the United States Constitution. (R. 59a-60a; 106a) On February 26, 1940, said motions were overruled, petitioners adjudged guilty and fined \$50 each or in default thereof to spend 30 days in the Westmoreland County Prison. R. 60a, 107a.

QUARTER SESSIONS COURT PROCEEDINGS

On March 1, 1940, petitioners by written petition for appeal to the Quarter Sessions Court of Westmoreland County complained of the judgment against them under the ordinance because as applied it abridged their rights of freedom of speech, press and of worship, contrary to the Fourteenth Amendment to the United States Constitution. (R. 6a; 18a) The petitions duly filed were continued indefinitely from term to term by the judge of the Court of Quarter Sessions of Westmoreland

County. The Quarter Sessions Court, on February 20, 1942, found that the appeals involved the constitutionality of the ordinance, and denied the appeals because the questions raised were no longer disputable on authority of *Stewart v. Commonwealth*, 309 U. S. 674; and *Pittsburgh v. Ruffner*, 134 Pa. S. C. 192, R. 110a, 111a.

SUPERIOR COURT AND SUPREME COURT PROCEEDINGS

Appeals were duly taken to the Superior Court from the orders refusing said appeals. By assignments of error petitioners complained of the ordinance on the grounds that it abridged said freedoms contrary to the Federal Constitution. (R. 113-4) Within ten days from date of the decrees entered by the Superior Court each petitioner filed his petition for appeal to the Supreme Court, complaining of the ordinance on the grounds that it provided for excessive tax and, as applied, abridged freedoms of speech, press and worship of Almighty God, contrary to the Federal Constitution. R. 126-34.

Each of the courts below held that the federal questions were properly raised and that the ordinance was constitutional and that petitioners had not been denied any federal rights.

Specification of Errors to be Urged

The Superior Court of Pennsylvania committed reversible error in overruling petitioners' assignments of error and in affirming the decree and order of the Quarter Sessions Court of Westmoreland County, refusing appeal from the judgments of the Mayor's Court, because the Superior Court should have held that the ordinance in question, as construed and applied to petitioners, is violative of the United States Constitution in that it abridges and unduly burdens, by taxation, petitioners' rights of freedom of speech, press and worship of ALMIGHTY GOD as by Him commanded in the Scriptures, and according to dictates of conscience, all contrary to the First and Fourteenth Amendments to the United States Constitution.

ARGUMENT

THIS COURT SHOULD HOLD THAT THE ORDINANCE IS VOID AND UNCONSTITUTIONAL AS CONSTRUED AND APPLIED TO PETITIONERS' ACTIVITY BECAUSE IT ABRIDGES AND UNDULY BURDENS BY TAXATION THE EXERCISE BY PETITIONERS OF THEIR RIGHTS OF FREEDOM OF SPEECH, PRESS AND WORSHIP OF ALMIGHTY GOD, AS HIS MINISTERS PREACHING FROM HOUSE TO HOUSE, CONTRARY TO THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

1

The First and Fourteenth Amendments to the United States Constitution must be very liberally interpreted so as to give effect to the intention of the framers of the instruments and of the people in adopting them; therefore the Court cannot define "religion" so as to exclude petitioners' activity from the protecting shield.

Chief Justice Marshall hung the beacon light for this Court's guidance in his classic words written in *McCulloch v. Maryland*, 4 Wheat. 316, 407 (1819): "We must never forget it is a Constitution we are expounding."

This same thought has reverberated through the years in other sound opinions filed in famous constitutional-law cases.³

The Constitution of the United States and the amendments thereto were established by and for protection of

³ *Ex parte Garland*, 4 Wall. 333, 382 (1867); *Hepburn v. Griswold*, 8 Wall. 603, 610 (1870); *Adkins v. Children's Hospital*, 261 U.S. 525; 544 (1923).

the people of the United States. *League v. De Young*, 11 How. 185, 203 (1851).

The framers of the Constitution were not mere dreamers and visionaries, toying with speculations and theories, but were practical men dealing with the facts of life as they understood them from bitter, trying experiences and putting into form the government they were creating, to "establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the *Blessings of Liberty to ourselves and our Posterity*." The writers of the Constitution and amendments thereto prescribed in language clear and intelligible the powers and limitations of government. *South Carolina v. United States*, 199 U. S. 437, 448, 449 (1905); *Pensacola Tel. Co. v. Western Union*, 96 U. S. 9 (1878).

In *Prigg v. Pennsylvania*, 16 Pet. 539, 610 (1842), the Court, among other things, said:

"And perhaps, the safest rule of interpretation after all will be found to be to look to the nature and objects of the particular powers, duties, and rights, with all the lights and aids of contemporary history; and to give to the words of each just such operation and force, consistent with their legitimate meaning as may fairly secure and attain the ends proposed. . . .

If by one mode of interpretation the right must become shadowy and unsubstantial, and without any remedial power adequate to the end; and by another mode it will attain its just end and secure its manifest purpose; it would seem upon principles of reasoning, absolutely irresistible, that the latter ought to prevail.

No court is authorized to construe any clause of the Constitution, particularly the Bill of Rights, so as to defeat its obvious ends, when another construction equally in accord with the words and sense will enforce and protect the liberties of the people. *Prigg v. Pennsylvania*, supra.

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; . . ." The Fourteenth Amendment mirrored and made applicable the provisions of the First Amendment against abridgment by the States of the exercise of the fundamental rights of speech, press and worship. *Lovell v. Griffin*, 303 U. S. 444; *Schneider v. State*, 308 U. S. 147; *Cantwell v. Connecticut*, 310 U. S. 296; *Grosjean v. American Press Co.*, 297 U. S. 233.

By these amendments it was intended to allow every person within the United States to entertain such beliefs and indulge in such practices respecting his relations to Almighty God and the duties they imposed as may be approved by the judgment and conscience of the individual provided his fellow men enjoy equal rights uninjured. *Davis v. Beason*, 133 U. S. 333, 342.

Davis v. Beason, supra, reviews also how oppressive measures were adopted and cruelties and punishments inflicted by the governments of England and continental Europe for many ages to compel individuals to conform to the "recognized" popular, prevailing religious beliefs, or "state religion" of the day. The folly of attempting by law to control all or any persons' mental operations and to enforce an outward conformity to a prescribed standard led to adoption of the First Amendment. Indeed many of the colonial states refused to adopt the Constitution until the First Amendment was proposed, submitted and adopted.

In *Watson v. Jones*, 13 Wall. (80 U. S.) 679, 728 (1872), involving the Walnut Street Presbyterian Church of Louisville, Kentucky, this Court held that in this country the full and free right to entertain any belief, to practice any principle and to teach any doctrine which does not violate the law of morality and property and which does not infringe personal rights is conceded to all.

Prior to the now vacated decision of *Jones v. Opelika*, supra, this Court had consistently refused to define "reli-

gion" and had left that to the conscience of each individual to determine for himself. This salubrious principle was announced by Thomas Jefferson in the *Virginia Statute for Religious Freedom* (Section 34 of Virginia Code), where, among other things, he said "that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or *propagation* of principles on the supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty" and further declared that the only time that the state or government can interfere is when such principles or practices "break out into overt acts against peace and good order." The foregoing statement of Mr. Jefferson is a part of the Virginia Statute and was quoted with approval by this Court in *Reynolds v. United States*, 98 U. S. 145, 162 (1879).

The statement of the majority opinion in *Jones v. Opelika*, *supra*—

"If we were to assume, as is here argued, that the licensed activities involve religious rites, a different question would be presented. . . . But it is, because we view these sales as partaking more of commercial than religious or educational transactions that we find the ordinances, as here presented, valid."

—is a plain violation of the principle that it is beyond the power of the courts to judge whether or not a claimed activity is "religious", since that is for the individual alone to determine.

If the courts are permitted to say that a particular practice is *not religious*, nor an act of worship because it does not harmonize with the accepted and recognized mode of practice followed by the "recognized" religions, then that would forever be a permanent limitation upon the modes of worship within the United States. Freedom of worship and of preaching the tenets of one's beliefs, cannot be properly limited by the views of the judiciary or the "recognized" religious clergy, for to do so destroys ad-

vancement and progress. Such would rule off the face of the earth the apostolic way of preaching from house to house, which is the oldest method of preaching the Gospel and the method recognized by Jehovah God.

This Court will take judicial notice of the Census of Religious Bodies in the United States in the year 1936, compiled by the United States Bureau of the Census, which shows that of the total population of the United States of 131,669,275,* the membership of all denominations was only 55,807,366. These figures show that more than one half of the people do not belong to any religious organization whatsoever. The religious census shows that a large percentage of the members of such religious organizations do not regularly attend services. Therefore there is great public need and convenience for calling upon the people at their homes and presenting to them literature containing explanation of Bible prophecies. There is no way that such persons not associated with any of the religious organizations can obtain any enlightenment or education on the Bible except it be brought to them at their homes. The sole purpose of Jehovah's witnesses is therefore to enable the people to have home Bible study without having to join any organization or without regularly attending any religious church edifice. These Bible studies are arranged for the convenience of the people, as to time, so as to assure their having the needed vital information pertaining to their eternal welfare as disclosed in revealed prophecies of Jehovah.

The method of preaching by ministers of the Gospel by calling at the homes of the people, even in so-called modern times, has been and is a recognized method. (See the dissenting opinion of Mr. Justice Murphy, *Jones v. Opelika*, supra, under title *Freedom of Religion*, footnotes 13, 16, 18 and 19.) Even the recognized clergyman must call from house to house in order to encourage the increase of his congregation. A minister moving into a locality could not begin a new congregation except by calling from house to

* 1940 census shown, as no population census taken in 1936.

house. It seems quite obvious, therefore, that "freedom of religion" and of worship of Almighty God, within the purview of the Constitution, is not limited to a particular place or edifice but extends to all practices, means and methods of communication of ideas and opinion among persons, including the radio, public press, pamphlets, advertising leaflets, word-of-mouth invitation, street distribution and house-to-house calls. If the right and guarantee is in any way limited to a particular practice, then such is the invitation to additional and further restrictions until the right is chiseled away and completely destroyed.

The danger of judicial limitation to the approved and recognized religious practices has been declared by the courts to be a pernicious doctrine that blasts freedom of worship. *Barnette v. West Virginia State Board of Education*, 47 F. Supp. 251; *Kansas v. Smith and Griggsby*, 155 Kans. 588, 127 P. 2d 518; *Donley v. Colorado Springs*, 40 F. Supp. 15. These decisions hold to the fundamental rule that if it were otherwise then freedom of worship and of religion would depend entirely upon the whim, view and complexion of the individual who sat upon the bench and thus the fundamental freedom and right would change with the shifting views of every judge. Such would mean the end of the guaranties incorporated in the Bill of Rights.

It has been universally the rule that the court has no religion, or religious views, because the court is supposed to be indifferent and neutral and to abide strictly by the "separation of church and state" doctrine, as the law "knows no heresy, and is committed to the support of no dogma, the establishment of no sect." *Watson v. Jones*, supra.

No one would have the hardihood to suggest that the framers of the Constitution intended to limit the "freedom of religion" mentioned in the First Amendment to any particular practice. On the contrary, the forefathers intended that such term and the liberty guaranteed thereby, would be given the broadest and most liberal construction, for in the various colonies were the Quakers, Catholics and others

who had been persecuted in the British Isles. In the colonies before the Constitution was adopted the Methodists persecuted the Baptists, the Episcopalians persecuted the Rogerines, and all of the various religions suffered in the colonies where they were in the minority. Measures were continually adopted to curtail the minority beliefs and practices. Therefore it is quite plain that the framers did not intend to limit the freedom thus guaranteed, but give it the broadest scope so as to allow the constitutional shield to protect popular and unpopular alike.⁵

This principle is well stated in *Cantwell v. Connecticut*, supra, by Mr. Justice Roberts: "The essential characteristic of these liberties is, that under their shield many types of life, character, opinion and belief can develop unmolested and unobstructed. Nowhere is this shield more necessary than in our own country for a people composed of many races and of many creeds." This Court recognized in the *Cantwell* case, supra, that the practice of Jehovah's witnesses in preaching by disseminating printed information from house to house and upon the streets was "a practice of worship protected by guaranties of religious freedom in the First Amendment.

"It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications of its powers, or to declare the means by which those powers should be carried into execution. It was foreseen, that this would be a perilous and difficult, if not an impracticable, task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence." —*Martin v. Hunter*, 1 Wheat. 304, 326.

⁵ *Bridges v. California*, 314 U. S. 252.

The activity of petitioners in distributing literature containing sermons on the Bible is their way of preaching the Gospel and worshipping Almighty God and must be regarded as such by this Court.

Through all the generations of mankind Almighty God Jehovah has had upon earth HIS WITNESSES who have testified before the world as His ministers of and concerning His Kingdom or Government of Righteousness, which He purposes to establish in the earth to bless all people of good will toward Him.

The Bible Book of Hebrews, chapter 11, sets forth the activity and history of many of these witnesses from the beginning of creation down to the time of Christ Jesus when on earth. All such witnesses and ministers consistently refused to compromise with totalitarian governments by obtaining a permit or license, or paying a tax to the state for the privilege of declaring God's judgments and Word as His witnesses and ministers. For this they endured cruel mockings and scourgings, were stoned, sawn asunder, tempted, slain, afflicted and tormented.

Since the persecution and crucifixion of Jesus Christ His ministers have been treated likewise.

All true Christians—witnesses and ministers of Christ—have been commissioned and commanded to preach the Gospel from house to house, from city to city, in villages, in the country, places, in the temple, and in meeting places, wherever they have opportunity to talk to the people.—Isaiah 43: 9-12; 61: 1-3; Matthew 9: 35; 10: 7, 11-14; 11: 1; 24: 14; Mark 1: 38; 6: 6; 13: 10; Luke 8: 1; 9: 60; Acts 2: 46, 47; 5: 42; 8: 4; 20: 20, 21; 1 Corinthians 9: 16; Revelation 22: 17.

The work is carried on in this manner, organized and intensified, because Jehovah's witnesses know that the world events and circumstances that have come to pass prove that

the universal war or 'battle at Armageddon' (Zephaniah 3:8. Revelation 16:16) is speedily approaching and that all mankind must be warned thereof and provided the substantial evidence along with the prophecies in order that those of good will toward Almighty God might find the way of escape through the paths fixed by God's Word, and thereby flee such catastrophe and gain life everlasting in the Kingdom to be established on the earth by Almighty God with Christ Jesus as King.

Petitioners are ordained ministers. A man is not a representative of God because some creature designates him as such. The only way to determine who are ordained of God is to judge them by their works and course of action. Jesus said, "Wherefore by their fruits ye shall know them" and "I do always those things that please [God]". (Matthew 7:20; John 8:29) The apostle James (chapter 2) states that "faith without works is dead" and faith must be proven by obedient action. The commission of Jehovah's witnesses is definitely set forth in the Book of the Prophet Isaiah, chapter 61, verses 1 to 3. It is not necessary for one to go to a theological school to be ordained or set apart for the service of the Most High. The apostles and disciples of Jesus Christ were said to be "unlearned and ignorant men" (Acts 4:13) by the high priest and his house at Jerusalem. While they might be said to be "unlearned" in the "higher learning" of the things of "this world", they were schooled and well-versed in the Word of God itself, and were able to speak and write fluently in the common (Aramaic) not classic (Hebrew) language of their day. So it is today with Jehovah's witnesses. Although unlearned in the sophistry, doctrines and precepts of men and worldly organizations they are schooled and well educated in the Word of the Lord. They are not interested in the classical or "dead" languages of the day, but their one aim is to "preach this gospel of the kingdom."—Matthew 24:14.

Jehovah's witnesses therefore appreciate their responsibility of preaching as stated in Luke 9:60, "Go thou and

preach the kingdom of God." Ezekiel 33:9, 18, states that if Jehovah's witnesses fail thus to preach, then the blood of those who are destroyed at the hands of Jehovah's Executioner in His battle at Armageddon for lack of warning shall be required at the hand of Jehovah's witnesses because of their "sin" of failing to properly warn.

The fact that some of petitioners are unable to engage full time as ministers but must spend part of their time to earn their living through secular trade or calling and not through the work of ministration does not prevent their being properly considered as ministers of the gospel, duly ordained. If such requirements were insisted upon, the disciples of Christ Jesus were not qualified to be His ministers. All of them had some secular callings; none of them were graduates of theological seminaries. Paul was educated as a lawyer. The others were fishermen and "unlearned men". Even Christ Jesus was a carpenter.

Secular vocations of some petitioners do not negative their fitness to preach the Gospel of the Kingdom nor prevent them from being considered entitled to legal recognition as ministers. *In re Cain*, 39 Ala. 440, 441, holds "that a minister of religion includes a minister belonging to a sect of religionists who perform ministerial labor gratuitously and rely on secular employment as a means of subsistence." Thousands of urban ministers enjoy large incomes from their ministry while many more thousands of rural ministers of the "recognized" religions are forced to engage in farming and other occupations during the week so as to preach in the pulpit of the country church on Sunday.

Jehovah's witnesses operate in a lawful and proper manner and use the Watch Tower Bible & Tract Society and Watchtower Bible & Tract Society, Inc., legal corporations, chartered under the charitable, religious and educational laws of Pennsylvania and New York, which instrumentalities are used to carry on the preaching of the gospel throughout all parts of the earth. These societies are used

to operate schools for the purpose of educating and training of ministers of the gospel to appreciate the responsibility of gaining knowledge in the Word of God to enable them to tell others of their responsibilities.

Making of public speeches in religious edifices can be said to be a proper and recognized way of preaching. In addition to meeting in halls and public meeting places and in the homes of the people for study, the apostolic way of calling at the homes and establishing Bible studies is the scriptural and most effective way of preaching the gospel and reaches all the people. The bound books, magazines, pamphlets and Bibles distributed by Jehovah's witnesses in this manner is for the convenience of the people in enabling them to have a permanent guide to study the Bible at their convenience. The literature is a substitute, therefore, for the oral word, and saves the time of the preacher distributing the same, as well as the person called upon.

The way of worshipping Almighty God, as done by petitioners, being a manner set out by Scriptural mandate, therefore cannot be said by this Court or any other court to be not a proper mode of worship. "Who art thou that judgest another man's servant? to his own master he standeth or falleth. Yea, he shall be holden up: for God is able to make him stand."—Romans 14:4.

There can be no question but that the activity of petitioners must be recognized by this Court as standing on the same level, for the purposes of protection under the Bill of Rights, with the methods of the recognized clergy, whose primary preaching activities consist of speaking from the pulpit.

* *Reynolds v. United States*, 98 U. S. 145, 162; Blackstone, *Commentaries* (Chase 3d ed., pp. 5-7); Cooley, *Constitutional Limitations*, 8th ed., p. 968.

The record conclusively establishes that petitioners were not selling literature in the sense that ordinary merchandise is sold, but that money contributions simultaneously received were used toward petitioners' activity, which is charitable and from which there is no commercial gain.

The evidence shows that of the petitioners, the one whose full time is devoted to the activity, carries on at a financial loss. The monthly deficit must be made up from a source other than receipts from placement of literature with the public. More than half the literature is given away to the poor and others who were unable to contribute. Often contributions are received of less than the cost of manufacturing and distributing the literature, and the distributor very rarely receives as a contribution the full amount fixed by Jehovah's witnesses. The part-time workers likewise give away most of the literature to the people and operate at a loss. The record shows conclusively that the work is benevolent and charitable and not commercial. If it were commercial work the literature would never be given away nor would the receiver be allowed to contribute any sum he desired when receiving the literature. The receiver would be required to pay a fixed price or else not receive the literature, if the work were commercial.

The contributions thus received by Jehovah's witnesses are identical to the "free-will" offerings received by the clergyman when his contribution plate is passed. No reasonable person would contend that the hearer "bought" or "purchased" a sermon when thus contributing to the preacher; nor can it be contended that anyone "bought" the *printed* sermons distributed by petitioners. They did not *sell* as that term is understood in commercial transactions. A commercial business could not last long if operated on

the principles or by the methods employed by Jehovah's witnesses. The reason Jehovah's witnesses carry on as they do in spite of the loss to them financially is because their entire life is devoted to Jehovah God and the declaration of His kingdom gospel. Each has pledged his all to see that the people receive God's Word concerning the complete establishment of God's kingdom in the near future. Each considers it a privilege to devote his time and money in bringing the message to the people, even if it costs him his life or liberty; therefore, financial loss is a small thing compared to the other hardships they are willing to endure for the name of the Lord Jesus Christ. Jehovah's witnesses themselves keep the deficit suffered in their operations made up by voluntary contributions *themselves* and do not depend upon someone on the *outside* to bear their burdens. Therefore their work is entirely charitable and it cannot be honestly or fairly contended to be commercial. The record does not support a conclusion that the transactions are commercial or money-making.

As part of this argument we refer to "Statement of Facts", pages 7 to 12, *supra*. There is absolutely no evidence to show that petitioners profited or gained from a selfish commercial or material standpoint through any contributions. The money contributed was only a small part of the expense of operations. The entire work was done at a loss to petitioners as the evidence shows. The money contribution only partially defrayed the expense. The greater number of books, booklets and magazines were given away free of charge to the poor and needy. The fixed amount of twenty-five cents to be contributed by one receiving the bound book is for the sole purpose of preventing excessive contributions from being received or asked for, and to make the work of Jehovah's witnesses uniform. There is no rule prohibiting the distribution of books to persons unable to contribute the fixed amount of twenty-five cents, although there is a rule that forbids distributors from asking more than such fixed amount. The fact that

one contributed twenty-five cents and stated that he "bought" the book, or thought he was buying it, or that it was "sold" to him, does not change the charitable nature of the preaching activity and does not make it commercial any more than does the act of a person in a religious edifice putting twenty-five cents in the contribution plate make the sermon or the preaching in the edifice commercial. Many religious organizations tithe their members and fix definite assessments against the members for the upkeep of the building and the minister. No one would have the audacity to contend that because those religious organizations assessed a fixed amount to be paid by members of their congregations such activity is commercial or that such fixed amounts would subject the preacher to a tax for preaching, or that the constitutional protection and guaranty of freedom of worship would be removed because amounts required by the fixed assessments had been accepted by such organizations.

Therefore it is plain that there is no distinction between charitable preaching activity of petitioners and the method of obtaining contributions by the "recognized" religious clergy. Petitioners give literature not upon condition of advance payment, or any payment, but permit the people to contribute any sum they choose not to exceed twenty-five cents when receiving any volume.

It is not contended that Jehovah's witnesses (petitioners) refused to deliver the literature to any person for want of money contribution. The record discloses that many volumes were given away free of charge. The petitioners contributed their own money earned in the sweat of their brow at secular occupations, or which they received from other sources, to carry on their ministerial work. Their taking of money contributions is not the primary aim, but is incidental to the main activity of preaching.

Many state courts have rightly held that the preaching of Jehovah's witnesses is not commercial and cannot be classed as selling, hawking, vending or peddling.

Throughout the entire United States during the past several years this type of license tax ordinance and similar laws have been applied to the activity of Jehovah's witnesses. Many convictions have been appealed to the higher courts and such courts of various states have held consistently that the duty falls upon such courts to construe such commercial laws so as to exclude the non-commercial preaching activity of Jehovah's witnesses. This the courts have done in spite of the fact that the evidence clearly showed that money contributions were received and that the complaining witnesses in many cases testified that they "bought" literature from Jehovah's witnesses involved and that Jehovah's witnesses were "selling" literature.

Most recent is the case of *People v. Barber*, decided January 7, 1943 by the New York Court of Appeals, reported in 289 N. Y. 378, 46 N. E. 2d 329. See also *People v. Gage*, 28 N. Y. S. 2d 817; *Cincinnati v. Mosier*, 61 Ohio App. 81, 22 N. E. 2d 418; *Semansky v. Stark*, 196 La. 307, 199 S. 129; *Shreveport v. Teague*, 8 S. 2d 640; *State v. Meredith*, 197 S. C. 351, 15 S. E. 2d 678; *Thomas v. Atlanta*, 59 Ga. App. 520, 1 S. E. 2d 598; *State v. Richardson*, 27 A. 2d 94; *State v. Mead*, 230 Iowa 1217, 300 N. W. 523; *Wilson v. Russell*, 146 Fla. 539, 1 S. 2d 569; *Hough v. Woodruff*, 147 Fla. 200, 2 S. 2d 577.

See also treatment of an analogous question in *Donley v. Colorado Springs*, supra. Even in England, where legislative bodies, though restrained by the traditions and principles embodied in the Bill of Rights, exercise a power not subject to constitutional limitation, a similar legislative

decree has received similar construction. (*Gregg v. Smith*, 12 Eng. Rul. Cases 501 [Q. B. 1873].)

Although the state courts, in these cases, held that the activity was not prohibited by the ordinances, nevertheless the courts reached this conclusion because of the non-commercial, charitable and preaching activity of Jehovah's witnesses. These findings of fact and conclusions should be persuasive that this Court ~~should~~ reach a similar conclusion.

While this Court cannot say that the ordinance should be construed to exempt petitioners' activity, for that is solely for the state court to determine, nevertheless this Court can say that the activity in question is exempt under the Bill of Rights of the Federal Constitution from the encroachment attempted by the application of the ordinance.

5

The record conclusively shows that in addition to preaching the Gospel under the guaranties of freedom of worship petitioners are engaged in press activity through dissemination of printed information and opinion.

It is conceded by respondent that the subject matter of the literature does not relate to any commercial, selfish purpose and does not pertain to the advertisement of ordinary articles of merchandise. An examination of the literature shows that it relates exclusively to the explanation of Bible prophecies and, in brief, that the literature contains printed sermons on Bible subjects. The theme of the literature is charitable and presents a message of comfort and hope for the people through an understanding of God's purposes to establish in the earth a Government of Righteousness that follows His impending 'battle at Armageddon' which will result in the destruction of all those who do not take their stand on the side of God's Kingdom.—Daniel 2: 44; Isaiah

32: 1, 16-18; Psalm 72: 1; 4, 7, 8; 67: 6, 7; 145: 13, 16; Isaiah 25: 6-8; 11: 6-9; Zephaniah 2: 3; Isaiah 65: 20-23; John 5: 27-29; 2 Peter 3: 13; Revelation 21: 1, 4; Proverbs 2: 21, 22; 10: 30; 29: 2.

The literature thus distributed pertains to information and opinion and is of that character protected by the First and Fourteenth Amendments, providing for the guarantee of freedom of press. This same literature has been recognized by this Court as entitled to the protection of freedom of the press in the cases of *Lovell v. Griffin*, supra, and *Schneider v. State*, supra.

In *Lovell v. Griffin*, supra, this Court said: "The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. What we have had recent occasion to say with respect to the vital importance of protecting this essential liberty from every sort of infringement need not be repeated. *Near v. Minnesota*, supra; *Grosjean v. American Press Company*, supra; *De Jonge v. Oregon*, supra."

In that *Lovell* case the Court also held that freedom of the press included distribution as well as printing.

In *Ex parte Jackson*, 96 U. S. 727, 733, this Court said: "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value."

There can be no question, therefore, but that the activity of petitioners is *press activity* and that the distribution of the printed information and opinion by them is protected by the freedom of press provision of the First Amendment, which is made applicable against the states in the Fourteenth Amendment.

This Court has held that "at the homes of the people" and "the streets" are proper and appropriate places for the dissemination of information and opinion and mere conveniences of the public and state are not sufficient grounds to abridge the exercise of the right.

In the case of *Hague v. C. I. O.*, 307 U. S. 496, this Court held that the streets and parks have been immemorially used by the public for purposes of assembly, communication of thoughts by the citizens and discussion of public questions. In *Valentine v. Christensen*, 316 U. S. 52, the Court said:

"This court has unequivocally held that the streets are proper places for the exercise of the freedom of communicating information and disseminating opinion and that, though the states and municipalities may appropriately regulate the privilege in the public interest, they may not unduly burden or proscribe its employment in these public thoroughfares."

In *Schneider v. State*, *supra*, this Court said:

"This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties.⁷ The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government by free men. It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties.

⁷ *Grdsjean v. American Press Co.*, *supra*, p. 244; *De Jonge v. Oregon*, *supra*, [299 U. S. 353] p. 364; *Lovell v. City of Griffin*, *supra*, p. 450.

"In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights. . . .

" . . . We are of opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press. . . .

" . . . As we have pointed out, the public convenience in respect of cleanliness of the streets does not justify an exertion of the police power which invades the free communication of information and opinion secured by the Constitution. . . .

" . . . But, as we have said, the streets are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place. . . .

"As said in *Lovell v. City of Griffin, supra*, pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most ef-

fective way of bringing them to the notice of individuals is their distribution *at the homes of the people*. On this method of communication the ordinance imposes censorship, abuse of which engendered the struggle in England which eventuated in the establishment of the doctrine of the freedom of the press embodied in our Constitution. To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees." [Italics added]

The Superior Court of Pennsylvania, by the construction placed on a similar ordinance in the case of *Commonwealth v. Reid*, 144 Pa. S. C. 569, 20 A. 2d 841, confines the right of freedom of the press and of worship to the public streets. The respondent, in the enforcement of the ordinance here, has not arrested petitioners in their use of the public streets in carrying on their ministerial activities, but only in doing this from house to house, on the grounds that freedom of the press, speech and worship does not permit one so engaged to call from house to house. The erroneous view of the Superior Court is expressed in the case of *Pittsburgh v. Ruffner*, supra, where that court said: "This appellant is perfectly free to worship God according to the dictates of his own conscience, separately or with his family and co-religionists, in his home or theirs, and in church, chapel, assembly or other gathering place."

The question of the right of the householder to keep off of his premises unwanted persons who call from house to house is not involved in this case. There is no contention that anyone objected to the presence of petitioners or that petitioners refused to leave when invited to do so. Furthermore the ordinance does not purport to punish any such abuses.

The undisputed evidence shows that the petitioners were exercising their rights in a proper and appropriate place within the meaning of the Bill of Rights.

The constitutional guarantees are not limited to persons disseminating information and opinion free of charge, but extend to persons receiving money contributions while so doing and to persons selling literature, and also to *commercial sales of literature* by those engaged therein for profit.

In *Commonwealth v. Reid*, supra, Judge Keller, speaking for the Superior Court said:

"The historical reference to 'pamphlets' in that [Lovell v. City of Griffin, supra] opinion and in other opinions of that Court (*Schneider v. State (Town of Irvington)*, supra, p. 164; *Thornhill v. Alabama*, 310 U. S. 88, 97; *Grosjean v. American Press Co.*, 297 U. S. 233, 245-250, etc.) *is not limited to 'pamphlets' which are distributed without cost.* Every student of history knows that the 'pamphlets' referred to by Chief Justice Hughes in his opinion, and by Mr. Justice Sutherland in the *Grosjean* case, were not for the most part circulated gratis, but were distributed to subscribers or sold." [Italics added]

In *Hannan v. Haverhill*, 120 F. 2d 87, "We take it also that this constitutional right . . . is not limited to handing it out free of charge, but includes also the right to offer the literature for sale so as to defray the cost of publication—otherwise, the circulation of one's opinions or the propagation of one's faith on an extensive scale would tend to become a prerogative of the well-to-do."

The guarantee of freedom of the press extending to dissemination of information and opinion and the guarantee of freedom to worship Almighty God extending to preaching the gospel from house to house are not limited to those

* Identical holdings in *Blue Island v. Kozak*, 379 Ill. 511, 41 N. E. 2d 515, and *State v. Greaves*, 112 Vt. 222, 22 A. 2d 487.

who engage in such activities only as long as they do not accept money contributions to aid in the carrying on of such work. Freedom of the press does not mean freedom so long as printed information and opinion is given away free of charge. The taking of money does not remove the constitutional protection. Any claim that constitutional protection is removed because money is received at once destroys the Bill of Rights.

Everyone knows that the *Pennsylvania Gazette*, edited by Benjamin Franklin, and his more famous *Poor Richard's Almanack* were sold. See "Newspapers", *Encyclopedia Americana*, *Encyclopædia Britannica* and *Columbia Encyclopedia*, and "Pamphlets", *Encyclopædia Britannica*.⁹

Newspapers, magazines and other periodicals are sold daily on the streets and elsewhere in every community of this land. Money is received by each distributor. The newspaper industry is a profitable one and many have grown wealthy through it. Its sponsors are entitled to all the guarantees of freedom of the press, even though they do gain great wealth through it. Those that are doing good, such as petitioners here, by constantly and continuously bringing printed matter on subjects of great importance to the attention of the public through *press activity* likewise are entitled to let desirous receivers of the information aid in keeping the "good work alive and going" by contributing a small sum with which to print more like literature. It is a ridiculous stalemate to hold that one must "go bankrupt" by forced "free" distribution of literature in order to receive the "free press" protection of the Constitution. If such a theory be sustained, then the receipt of money for a piece of literature would allow censorship taxation,

⁹ See also books by J. D. Symon, *The Press and Its Story*; J. M. Lee, *The History of American Journalism*; E. C. Cook, *Literary Influences in Colonial Newspapers*; I. J. S. Given, *The Making of a Newspaper*; S. Bent, *Ballyhoo*; W. B. Graves, *Readings in Public Opinion*; Walter Lippman, *Liberty and the News* and *The Phantom Public*; Upton Sinclair, *The Brass Check*; E. P. and F. Harris, *The Community Newspaper*; J. L. Woodward, *Foreign News in American Newspapers*; Stanley Walker, *City Editor*.

prohibition and every other sort of abridgment. Certainly the founding fathers did not intend so to limit the freedom. Such a reprehensible contention, if permitted to stand, means the "death toll" to freedom of the press in America. Acceptance of money by petitioners is a means to an end, that is to say, further proclamation of the Kingdom message of Almighty God.

To give the Bill of Rights the construction asked for by respondent would mean the strangling of the fundamental freedoms to the point of death and make the Constitution a meaningless, empty and impotent document.

8

Limitations applicable to selling of ordinary articles of merchandise so as to allow application of ordinances of the kind in question do not permit an extension to include distribution of literature and simultaneous receipt of money.

This Court held in *Schneider v. State*, supra; that legislative preferences and beliefs may well support regulation directed at "other personal activities" but that such would not be adequate and would not justify an application thereof to "the exercise of rights so vital to the maintenance of democratic institutions." In the case of *Hannan v. Haverhill*, supra, involving an ordinance of the same type as the Jeannette ordinance, it was said: "Restrictions properly applicable to hawkers and peddlers selling ordinary articles of merchandise on the streets might not be appropriate to regulate the sale and distribution of literature of the sort offered for sale by the plaintiffs [Jehovah's witnesses]."

It seems plain therefore that regulations and ordinances providing for fees and taxation of peddlers, hawkers and vendors of ordinary articles of merchandise, such as shoe laces, bananas, framed pictures, cosmetics, canary birds, etc., cannot be constitutionally sustained against the exer-

cise of freedom of the press, even though it be contended that there was a *sale* of literature, whether printed or otherwise recorded.

9

The legislative enactments providing for taxation, regulation or prohibition of any activities are not presumed to be constitutional when applied to exercise of fundamental personal rights, because the legislative declarations are not supreme when confronted with the Bill of Rights.

This Court held, in *Schneider v. State*, supra, that legislative preferences respecting matters of public convenience supporting application thereof to "other personal activities" would not justify application thereof to the four freedoms protected by the Bill of Rights and the Fourteenth Amendment. In the case of *Herndon v. Lowry*, 301 U. S. 242, this Court said, "The power of a state to abridge freedom of speech . . . [press and worship of Almighty God] is the exception rather than the rule and the penalizing even of utterances of a defined character must find its justification in a reasonable apprehension of danger to organized government. The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state."

In *United States v. Carolene Products Co.*, 304 U. S. 144, 152, Chief Justice Stone, speaking for the Court, said:

"There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth. See *Stromberg v. California*, 283 U. S. 359, 369-370; *Lovell v. Griffin*, 303 U. S. 444, 452.

"It is unnecessary to . . . enquire . . . whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry."

If it be held that the presumption of validity of legislation is supreme, then all sorts of unconstitutional laws directly and indirectly circumventing the injunctions of the Constitution and the Bill of Rights would be permitted and make inoperative and void the strong provisions of the Bill of Rights. It would take from the judicial and executive branches all power and authority and invest it in the legislative branch of the government and the administration of justice would become an idle ceremony.

Surely this Court will not uphold such an alien and pernicious principle and doctrine.

10

Authors of the First Amendment did not intend to limit abridgments of the fundamental rights protected to particular form of encroachment, but intended that all kinds of abridgments, including taxation of any kind, should be denied.

In the now vacated opinion in *Jones v. Opelika*, supra, a startling statement was made by Mr. Justice Reed:

"It is prohibition and unjustifiable abridgment which is interdicted, not taxation."

Every school child knows that the forefathers fought valiantly until they cast off and out from this land the favorite yoke of oppression, known as the "stamp-taxes".

The "stamp tax" was *taxation*. This method of abuse and prohibition of the freedom of the press was without question of doubt more clear in the minds of the framers of the First Amendment than any other sort of encroachment.

Mr. Justice Murphy, in *Thornhill v. Alabama*, 310 U. S. 88, said, "The exigencies of the colonial period and the efforts to secure freedom from oppressive administration developed a broadened conception of these liberties as adequate to supply the public need for information and education with respect to the significant issues of the times."¹⁰

It was the favorite and best known means of oppression at the time of the American Revolution. For historical discussion of these oppressive taxes, see *Grosjean v. American Press Company*, supra; *Near v. Minnesota*, 283 U. S. 697, 707-716.¹¹ See also Motion for Rehearing in *Jones v. Opelika*, etc., Nos. 280, 314 and 966, Oct. Term 1942, pages 20 to 26, inclusive.

The term "abridge" as here used in the First Amendment means "to shorten, curtail or reduce" and comes from the same root word as "abbreviate". It does *not* mean "destroy, forbid, prohibit, prevent."

It cannot be contended that the license tax is not included within the prohibition of the First Amendment. The license tax is more pernicious than the ancient stamp tax because it is an arbitrary tax providing for a blanket amount which must be paid as a condition precedent to the

¹⁰ See Duniway, *The Development of Freedom of the Press in Massachusetts*, p. 123 et seq.; Tyler, *Literary History of the American Revolution*; 2 Bancroft, *History of the United States*, p. 261; Schofield, *Freedom of the Press in the United States* (1914), 9 Proc. Am. Social. Soc. 67, 76, 80. See argument Point 1, supra, pages 15 to 21.

¹¹ See W. G. Bleyer, *The History of American Journalism*, 1927 ed. 1129; G. J. Patterson, *Free Speech and a Free Press*, 1939 ed.; W. M. Clyde, *The Struggle for the Freedom of the Press from Cartton to Cromwell*, 1934 ed.; C. D. Collet, *History of Taxes on Knowledge*, 1899 ed.; Ford, *Pamphlets on the Constitution of the United States, 1787-1788*, pp. 113, 156-157, 316 (1888); *Pennsylvania and the Federal Constitution* (McMaster and Stone, Eds.), pp. 180, 181, 576 ff. (1888); Stevens, *Sources of the Constitution of the United States*, pp. 213, 218, 221 (1894).

exercise of the right and does not depend upon income or profit of the individual or the amount of business carried on in the city. It does not make allowance for those engaged in charitable activity where most of the items are delivered free of charge. The amount of the tax is not dependent upon the number of pieces of literature distributed among persons from whom contributions are received. No provision is made for any reduction in amount of tax on account of the number of pieces given away free of charge. The license tax is therefore the worst kind of burden or abridgment.

In *Grosjean v. American Press Co.*, supra, the Louisiana Legislature imposed a license tax on the owners of commercial newspapers for the privilege of selling and charging for commercial advertisements, and measured the amount of the tax by a percentage of the gross receipts from such commercial advertisements. That case is directly in point with the license tax in this case and the opinion of Justice Sutherland is here quoted from:

"The tax imposed is designated a 'license tax for the privilege of engaging in such business,' that is to say the business of selling, or making any charge for [commercial] advertising. . . . The framers of the First Amendment were familiar with the English struggle, which then had continued for nearly eighty years, at the end of which time it culminated in a lasting abandonment of the obnoxious taxes. The framers were likewise familiar with the then recent Massachusetts episode; and while that occurrence did much to bring about the adoption of the amendment (see *Pennsylvania and the Federal Constitution*, 1888, p. 181), the predominant influence must have come from the English experience. It is impossible to concede that by the words 'freedom of the press' the framers of the amendment intended to adopt merely the narrow view then reflected by the law of England that such freedom con-

sisted only in immunity from previous censorship; for this abuse had then permanently disappeared from English practice. *It is equally impossible to believe that it was not intended to bring within the reach of these words, such modes of restraint as were embodied in the two forms of taxation already described. . . .* In the light of all that has now been said, it is evident that the restricted rules of the English law in respect of the freedom of the press in force when the Constitution was adopted were never accepted by the American colonists, and that by the First Amendment it was meant to preclude the national government, and by the Fourteenth Amendment to preclude the states, from adopting *any form of previous restraint upon printed publications, or their circulation, including that which had theretofore been effected by these two well known and odious methods.*

"This Court had occasion in *Near v. Minnesota*, supra, . . . and the Court was careful *not* to limit the protection of the right to any particular way of abridging it. . . .

"Judge Cooley has laid down the test to be applied — The evils to be prevented were not the censorship of the press merely, but *any action* of the government by means of which it might prevent such *free* and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens." [Italics added] 2 Cooley's *Constitutional Limitations*, 8th ed., p. 886.¹²

¹² "The First Amendment to the Constitution further provides that Congress shall make no law abridging the freedom of speech or of the press. What is first noticeable in this provision is that it undertakes to give no rights, but it recognizes the rights mentioned as something known, understood, and existing; and it forbids any law of Congress that shall abridge them.

"It seems more than probable, however, that the constitutional freedom of the press was intended to mean something more than mere exemption from censorship in advance of publication. Such censorship had never been general in the Colonies; it did not exist at all at the time of the
[continued on next page]

It seems plain that if the Bill of Rights is interpreted in the light of and with the aid of contemporary history at the time that the Amendment was written so as to give effect to the actual intention of the framers thereof, the license tax must be declared invalid as one of the abridgments clearly prohibited by the First Amendment. The guarantee of immunity contained in the Bill of Rights places press, speech and worship in favored positions because of special contributions they make to public welfare (*United States ex rel. Milwaukee Social Democratic Pub. Co. v. Burleson*, 255 U. S. 407, 410) and every conceivable form of abridgment thereof was intended to be prohibited.

This Court in *Bridges v. California*, supra, in discussing these and other relevant issues, said (at page 265) that "the only conclusion supported by history is that the unqualified prohibitions laid down by the framers were intended to give to liberty of the press, as to the other liberties, the broadest scope that could be countenanced in an orderly society."

The need of the government for revenue does not weaken

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Revolution, and there was no apparent danger of its ever being restored. To forbid it, therefore, and especially just at a time when the people had been taking a larger share in the government into their own hands, and when the command would be laid on their own representatives, would appear to savor somewhat of idle ceremony. . . . and the evils they feared had no necessary connection with any established or threatened censorship. Nor could any valuable purpose be accomplished by introducing in the Constitution a provision which should forbid merely a previous supervision of intended publications, if the law might be so made, or so administered, as to inflict punishment for publications which might be not only innocent, but commendable.

" . . . It is a just conclusion, therefore, that this freedom of public discussion was meant to be fully preserved; and that the prohibition of laws impairing it was aimed, not merely at a censorship of the press, but more particularly at any restrictive laws or administration of law, whereby such free and general discussion of public interests and affairs as had become customary in America should be so bridged as to deprive it of its advantages as an aid to the people in exercising intelligently their privileges as citizens, and in protecting their liberties." [Italics added] *Principles of Constitutional Law*, Cooley (Student's Series, compiled by Andrew C. McLaughlin, 1898, printed by University Press), Chapter XIV, Section V, pp. 299-301; see also Cooley's *Constitutional Limitations*.

the constitutional immunity so as to allow taxation in any form. The fact that it is called a "license tax" does not save it. Whether it is called a "license tax", "business tax", "occupation tax", "privilege tax" or any other kind of tax, if the taxation or the money exaction falls directly on the act of circulation, it is unconstitutional abridgment of the liberty of circulation. Circulation, *distribution*, is the life of the press. The greater the number of distributors, the greater the tax; the greater the tax, the greater the burden.

The forefathers did not intend that the government should depend for its support upon taxation of the privileges and rights guaranteed by the Bill of Rights, which the government was established to protect. To sustain a tax which burdens the exercise of a constitutional right (whether that be distribution of pamphlets or any other printed information, or a tax upon each printing press) is like shackling the cherished freedoms of press, speech and worship and abandoning them in the path of onrushing mechanized monsters. It seems that the government—municipal, state and federal—should be strong enough to protect itself by confining its taxing activities to the ordinary legitimate form of exactions without resorting to taxation of liberties of the people secured by the Bill of Rights, which all governing servants—judicial or otherwise—are sworn to protect.

In *McCulloch v. Maryland*, *supra*, it is said: "The power to tax is the power to destroy." That destruction is a grim and appalling reality in the instant case.

We submit that this entire question of the tax being an unconstitutional burden upon rights guaranteed by the Bill of Rights can be disposed of on this single, lone milestone of constitutional law and history; the case of *McCulloch v. Maryland*, *supra*. There it was a tax upon property of the federal bank. The Constitution did not specifically prohibit taxation on banks but the court construed it to be a burden. For the same reasons that the Constitution does not allow such a burden on such instrumentalities of the

sovereign "people of the United States" it does not allow a burden upon the people's civil rights guaranteed more specifically by the first amendment. In that case Mr. Chief Justice Marshall said:

" . . . No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision. . . .

"But, such is the paramount character of the constitution, that its capacity to withdraw any subject from the action of even this power, is admitted. . . . If the obligation of this prohibition must be conceded—if it may restrain a State from the exercise of its taxing power on imports and exports; the same paramount character would seem to restrain, as it certainly may restrain, a State from such other exercise of this power, as is in its nature incompatible with, and repugnant to, the constitutional laws of the Union.

"That the power of taxing it [Bank of the United States] by the States may be exercised so as to destroy it, is too obvious to be denied. . . . But the very terms of this argument admit that the sovereignty of the State, in the article of taxation itself, is subordinate to, and may be controlled by, the constitution of the United States. . . .

" . . . We are not driven to the perplexing inquiry, so unfit for the judicial department, what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power. *The attempt to use it on the means employed by the government of the Union, in pursuance of the constitution, is itself an abuse, because it is the usurpation of a power, which the people of a single State cannot give.* [Italics added]

"We find, then, on just theory, a total failure of this original right to tax the means employed by the government of the Union, for the execution of its powers. The right never existed, and the question whether it has been surrendered, cannot arise. . . .

" . . . The question is, in truth, a question of supremacy;

and if the right of the States to tax the means employed by the general government be conceded, the declaration that the constitution, and the laws made in pursuance thereof, shall be the supreme law of the land, is empty and unmeaning declaration. . . .

"The court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared.

"We are unanimously of opinion, that the law passed by the legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void."¹³ [Boldface added]

The analogy is clear when the freedoms named in the First Amendment are substituted for the agencies of the federal government referred to in that opinion.

This Court can well consider, in this connection, a profound expression made by Mr. Justice Sutherland, dissenting; in *Associated Press v. N. L. R. B.*, 301 U. S. 103, 141: "Do the people of this land—in the providence of God, favored; as they sometimes boast, above all others in the plenitude of their liberties—desire to preserve those so carefully protected by the First Amendment: liberty of religious worship . . . ? If so, let them withstand all *beginnings* of encroachment. For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."

¹³ "A case could not be selected from the decisions of the Supreme Court of the United States, superior to this one of *McCulloch v. Maryland*, for the clear and satisfactory manner in which the supremacy of the laws of the Union have been maintained by the court, and an undue assertion of State power overruled and defeated."—*Kent's Commentaries*, I., 428.

11

Misconception attributable to dictum of this Court and per curiam opinions relied upon to extend the license tax and other taxation upon exercise of constitutional rights needs clarification by discussion of this Court.

In *Associated Press v. N. L. R. B.*, supra (at page 132), it is said that "The publisher of a newspaper . . . like others . . . must pay equitable and non-discriminatory taxes on his business." Those engaged in *press activity*, such as the newspapers and other publishers, are not exempt from ordinary forms of taxation. They are required to pay various types of taxes, federal and state, including net income taxes, capital stock taxes, social security taxes, corporate franchise taxes, real and personal property taxes and unemployment compensation taxes. All these are the ordinary form of taxation. But because the public press can be required to pay ordinary forms of taxation, one could not argue and successfully contend that such newspapers and publishers could be required to pay a license tax upon their business, the distribution of their literature or the printing thereof. None of the ordinary forms of taxation, distinguished from the license taxes, have a prohibitory or censorial quality and none of such operate as conditions precedent to the publication and circulation of literature.

Therefore this Court should reconsider and clarify the effect of its per curiam memorandum decision in *Giragi v. Moore*, 301 U. S. 670, which is here contended to be an erroneous statement of the law. In that case the State of Arizona levied a tax of 1 percent on the gross receipts of newspaper publishing business and required every person engaged in such business to obtain a license and account for and pay the license tax. In that case the Federal question was raised for the first time on motion for rehearing before the Supreme Court of Arizona. The record, therefore, did not

present a properly raised Federal question when appeal was dismissed by this Court. The case was disposed of on the jurisdictional statement and the per curiam decision was not accompanied by an opinion explaining the relation between *Grosjean v. American Press Co.*, supra, and *Associated Press v. N. L. R. B.*, supra, to the issue involved.

What has been here said regarding *Giragi v. Moore*, supra, also applies to *Arizona Publishing Co. v. O'Neil*, 304 U. S. 543, where this Court, on appeal, affirmed the judgment of the United States District Court for the District of Arizona upholding the same tax statute as was involved in *Giragi v. Moore*, supra. License tax in the Arizona cases is very similar to that declared unconstitutional in *Grosjean v. American Press Co.*, supra.

The statement in the now vacated majority opinion in *Jones v. Opelika*, supra, that—

"The Constitution draws no line between a payment from gross receipts or a net income tax and a suitably calculated occupational license."

—is irrelevant, immaterial and very misleading. The Court has not hesitated to strike down taxes on various grounds, though the Constitution says nothing about them at all. This Court has also declared invalid a state tax on federal instrumentalities and federal taxes on state instrumentalities, although there is no specific language in the Constitution which requires that result.

The cases of *Giragi v. Moore*, supra, and *Arizona Pub. Co. v. O'Neil*, supra, are in conflict with *McGoldrick v. Berwind-White Coal Co.*, 309 U. S. 33, 45, holding that there is a difference between gross income taxes and net income taxes. It is the effect of the tax which determines the validity under the Constitution and if the same directly burdens the privileges of freedom of speech, press and worship, guaranteed and secured by the Constitution, they must be declared invalid.

12

The license tax provided for by the ordinance here is a revenue raising measure exclusively and not a regulatory fee to provide expense of administering the regulation.

The Superior Court of Pennsylvania describes the license tax provided for in the ordinance as being a revenue-raising measure. That Court says: "It is within the express grant of municipal power and authority contained in the Third Class City Act of June 23, 1931, P. L. 932, Art. XXVI, sec. 2601, and its amendments, 53 PS ss. 2198-2601, and the prior acts regulating third class cities and boroughs."

An examination of these statutes discloses the following: "License Taxes for Revenue Purposes." Among other things it says: "The *taxes* assessed under this section shall be in addition to all other taxes. . . ."

It cannot be said, therefore, that the license tax here is regulatory, for it is not such in character, name or operation.

It is noticed that the majority opinion of June 8, 1942 in *Jones v. Opelika*, supra, repeatedly referred to license taxes provided by the cities of Opelika, Casa Grande and Fort Smith as "fees". This was a mistake on the part of the majority and was contrary to the construction placed upon the ordinances in those cases by the state courts. An examination of the opinion in those cases, as well as the statutes authorizing the ordinances, discloses that they were revenue-raising measures exclusively and were regarded as such by the parties to the cases. It is beyond the authority of this Court to construe a statute or ordinance and this Court is specifically prohibited from attributing to a statute or ordinance a characteristic not given it by the state court or contrary to the characteristic described by the state court.

The ordinance in question is not regulatory because the

issuance of the license does not relate to the time, place or manner of distribution. Once a person receives the license prescribed, he is free to "peddle" at any time, at any place and in any manner without interference from the licensing authority.

The license tax is not a fee for policing because there is no provision in the law for the policing of distributors of literature. The distribution of literature is not claimed by the ordinance to throw an added police expense or burden upon the city. A person exercising his constitutional rights in distributing literature from house to house can no more be required to contribute toward additional police expense by payment of a special use license than could a person lawfully using the streets and sidewalks for any lawful purpose.

The expense of operating a municipality must be provided through properly raised taxes of a general nature. The exercise of constitutional rights should not be taxed to support the municipal, state or federal government because if this were permitted, the government would become dominant as against the Constitution and the people themselves.

Cox v. New Hampshire, 312 U. S. 569, is not in point here because what was there involved was a regulatory fee to meet the expense incident to administration of the law and to provide police protection and attendance at parades upon the streets. The fee there was not a revenue-raising tax but was entirely regulatory. The tax here is not contended to be a fee for policing or licensing but is revenue raising exclusively.

It is not permissible to attack a license tax exacted under revenue-raising laws as being excessive, confiscatory and unduly burdensome to the point of destruction and prohibition.

It has always been the universal rule of this Court that when a tax is found to be proper and constitutional upon a given activity such tax cannot be attacked as a "substantial clog" or excessive. Once it is decided that a license tax can be imposed upon the right to print, publish, circulate or distribute printed matter or to preach the gospel, as did Christ Jesus and His apostles, then there is no limit to this power of taxation and complete control, suppression, and prohibition. Destruction of the four freedoms can readily result.

Prior decisions of this Court have repeatedly pointed out that when a subject matter is brought under the taxing power of the federal, state or municipal government, the amount—regardless of how destructive or prohibitive it may be—cannot be questioned by the judiciary. There is no limit to its exercise within the discretion of the government, state or city. The oppressiveness of the burden cannot interdict the taxation. *Magnano Co. v. Hamilton*, 292 U. S. 40; *Stewart Dry Goods Co. v. Lewis*, 294 U. S. 550.

In *Veazie Bank v. Fenno*, 8 Wall. 533, 548, the validity of an increased tax on the circulating notes of persons and state banks was questioned as excessive. The court refused to consider the question and said: "The first answer to this is that the judiciary cannot prescribe to the legislative departments of the government limitations upon its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected. So if a particular tax bears heavily upon a

corporation or a class of corporations, it cannot, for that reason only, be pronounced contrary to the Constitution." See also "Child Labor Tax Case", 259 U. S. 20, 41; *McCray v. United States*, 195 U. S. 27; *Spencer v. Merchant*, 125 U. S. 345; *Flint v. Stone Tracy Co.*, 220 U. S. 107.

If the cities and states can require a license as a condition precedent to the circulation and distribution of information and opinion, it can impose an identical license upon those engaged in the newspaper publishing business. It can then impose heavy fines and penalties for non-payment of the tax and enjoin publication and distribution until it is paid. The amount can be increased to such an extent that distributors, pamphleteers, and publishers of newspapers and other periodicals can be limited materially or prohibited.

The fact that thousands of villages, towns and cities have license tax laws against "peddlers" clearly shows that increased and nation-wide distribution of literature would suffer a tremendous burden and if unable to pay the prohibitory license fees charged, would be compelled to stop distribution or else suffer severe punishment. In many instances the taxes would exceed the gross contributions received by Jehovah's witnesses. The towns most likely to enforce such license tax laws are the small towns and rural areas where the principal field of house-to-house apostolic preaching is conducted. As an example of the tremendous burden thrown upon such distributors of lit-

erature we set out in a footnote a list of a few of the towns and the license tax required by each.¹⁴

It is manifest that in a great number of towns deficits will arise, especially with reference to those persons who engage in the activity only part time, such as one day per week. If the number of municipalities exacting these taxes or fees increased, the deficits will continually increase and thus distribution be entirely prohibited.

The so-called "enlarged field of distribution" mentioned by the majority opinion of June 8, 1942 in *Jones v. Opelika*, supra, is wholly imaginary and illusory and will itself result in a cumulative increase in the financial burden to the extent of destruction of the activity. While these taxes might be properly enforced as to peddlers of ordinary

STATE	CITY	POPULATION	LICENSE FEE
Arizona	Buckeye	1,077	\$10 per quarter
	Casa Grande	1,351	\$25 per quarter
	Douglas	8,623	\$25 per annum
	Duncan	1,050	\$10 per annum
	Flagstaff	5,080	\$5 per day
	Nogales	5,135	\$50 per day
	Prescott	6,018	\$10 per month
	Safford	1,706	\$10 per annum
	Wickenburg	734	\$200 per annum
	Willcox	806	\$2 per day
California	Winslow	4,577	\$5 per day
	Yuma	5,325	\$5 per day
	El Cerrito	6,137	\$10 per quarter
	Roseville	6,653	\$5 per month
Florida	Woodland	6,637	\$50 per quarter
	Lake Worth	7,408	\$25 per annum
Georgia	Albany	19,055	\$250 per annum
	Griffin	13,223	\$75 per annum
Iowa	Fort Dodge	22,904	\$35 per day
	Keokuk	15,076	\$5 per day
Kentucky	Mason City	27,080	\$3 per day
	Corbin	7,893	\$10 per week
	Someriset	6,154	\$7.50 per day
New York	Ithaca	19,370	\$5 per month
	Massena	11,328	\$50 per annum
Pennsylvania	Charleroi	10,784	\$5 per day
	Duquesne	20,693	\$2 per day
	Grove City	6,296	\$25 per annum
	New Brighton	9,630	\$5 per day
Wisconsin	Marshfield	10,359	\$10 per day

articles of merchandise throughout the nation, it is manifest that they cannot be enforced as to dissemination of printed information and opinion. The safety of the nation often depends upon wide-spread circulation and distribution of information and opinion for the enlightenment and education of the entire population. This needed nation-wide distribution would be hampered, if not destroyed, by permitting such license taxes to be imposed upon distributors who often voluntarily engage in this work and who must be financed from other sources as they go along.

It cannot be fairly contended that the distributor can pass on to the *consumer* the additional burden imposed by reason of the license tax. The *consumer* is as fully entitled to be free of the same burden as is the distributor. Freedom of press and (or) worship protects the conveyer of ideas as well as the ~~receiver~~ receiver of ideas. Here the conveyers of ideas, Jehovah's witnesses, are discharging their trust or obligation imposed as trustees for the receivers of the literature to urge in behalf of the *consumer* that the license tax is a burden on the receiver, or consumer as well as on the distributor. The entire avenue should be kept open for *both the distributor and the distributee* or receiver. In making this claim Jehovah's witnesses are not requiring a special privilege for themselves, but they are discharging to this Court the responsibility which they owe as citizens of these United States and to this Court by clearly showing wherein this sort of license tax injures not only petitioners but also every citizen in the United States who might desire to pamphleteer on any matter: political, social or religious. Jehovah's witnesses do not claim they are immune from all kinds of taxes. They pay income taxes; ad valorem realty taxes on their homes; license taxes on their automobiles; sales taxes on their food, etc. However, the charitable organization which they use to preach the gospel is, like all religious organizations, exempt by statute from the payment of state and federal taxes of all kinds. None of the above taxes, as distinguished from the license taxes in the present

case, have a prohibitory or censorial quality or operate as conditions precedent to the publication or circulation of literature explaining the Bible. The license tax, however, does that very prohibitive evil thing.

14

Peddlers' and occupational license-tax ordinances have uniformly been held unconstitutional when applied to interstate commerce and declared a burden upon such transactions.

The word "abridge" as we have heretofore pointed out, means to "shorten" or "curtail" or "burden". The rights of freedom of speech, press and worship are abridged by any statute or ordinance which burdens the exercise thereof. Consistently and universally this Court has struck down, time and again, all attempts on the part of the states or their municipalities to license the peddling, hawking, selling or solicitation of sales directly to the consumer through interstate commerce. (*McGoldrick v. Berwind-White Coal Co.*, supra; *Robbins v. Shelby County Taxing District*, 120 U. S. 489, 494-496; *Caldwell v. North Carolina*, 187 U. S. 622, 624-632; *Rearick v. Pennsylvania*, 203 U. S. 507, 510-513; *Dozier v. Alabama*, 218 U. S. 124, 126-128; *Real Silk Hosiery Mills v. City of Portland*, 268 U. S. 325, 335-336; *Carson v. Maryland*, 120 U. S. 502; *Asher v. Texas*, 128 U. S. 129; *Stoutenburgh v. Hennick*, 129 U. S. 141; *Brennan v. Titusville*, 153 U. S. 289; *Stockard v. Morgan*, 185 U. S. 27; *Crenshaw v. Arkansas*, 227 U. S. 389; *Rogers v. Arkansas*, 227 U. S. 401; *Stewart v. Michigan*, 232 U. S. 665; *Davis v. Virginia*, 236 U. S. 697.) The business interests affected in those cases were not put to the burden of proving that the amounts exacted were unreasonable, or excessive.

Yet here, where matters much weightier than commerce are involved, the court below has imposed such a burden

on petitioners, evidently upon the theory that the ordinance under review exacted fees as compensation for services rendered. However, the ordinance does not purport to be of this character or to be other than general taxing measure; nor has it been construed by the court below to provide for reimbursement for expenses incurred by the city in policing the streets. This Court, in commerce cases, has laid down the definite rule that license taxes will be struck down where it did not "affirmatively" appear that the licenses were imposed, not as ordinary taxes, but as reimbursement for expenses incurred by the taxing authority. (*Bingaman v. Golden Eagle Western Lines*, 297 U. S. 626, 628; *Ingels v. Morf*, 300 U. S. 290, 294; *McCarroll v. Dixie Greyhound Lines, Inc.*, 309 U. S. 176, 181) It is difficult to understand why this rule well established in commerce cases should have been disregarded by the majority opinion on June 8, 1942, in *Jones v. Opelika*, supra; it should be given its due consideration here.¹⁵

In *Di Santo v. Pennsylvania*, 272 U. S. 34, 39, this Court said that the license tax ordinance is very likely to be used "as an instrument of discrimination against interstate or foreign commerce."

Freedom of speech, press and worship are far more sacred and mean more to the welfare of the nation than does interstate commerce. It is therefore plain that if the Court properly protects interstate commerce from a burden of this type of license tax law, it could more easily and should more readily establish the same rule so as to prohibit any sort of burden or abridgment of the fundamental personal rights protected under the First and Fourteenth Amendments.

¹⁵ See also pages 8 and 9 of the slip opinion of the dissent by Chief Justice Stone in *Jones v. Opelika*, supra.

15

State courts and lower federal courts have consistently held that the license tax ordinances are unconstitutional when applied to the activity of Jehovah's witnesses.

The Supreme Court of Vermont, on November 5, 1941, in the case of *State v. Greaves*, supra, held that an ordinance providing for the payment of a tax and obtaining of a license, which is identical to the ordinance involved in this case, was unconstitutional when applied to the preaching activity of Jehovah's witnesses, because it was a direct burden upon the rights of freedom of press and of worship. That court based its decision upon *Grosjean v. American Press Co.*, supra.

This was followed by *Commonwealth v. Reid*, supra, by the Superior Court of Pennsylvania, which held that the license tax ordinance of the Borough of Clearfield, Pennsylvania, was unconstitutional when construed and applied to the preaching activity of Jehovah's witnesses upon the public streets of the borough.

These cases were followed by the Supreme Court of Illinois in *Blue Island v. Kozul*, supra, where an ordinance providing for the license tax payment by vendors of merchandise was declared to be an unconstitutional abridgment of the rights of freedom of press when applied to the preaching activity of Jehovah's witnesses. A motion for rehearing was duly overruled by the Supreme Court of Illinois. When the decision by this Court on June 8, 1942, in *Jones v. Opelika*, supra, was filed, forthwith the City of Blue Island was permitted to file its second motion for rehearing in the Supreme Court of Illinois. Upon consideration of said second motion for rehearing, that Court boldly declined to follow the majority of this Court in the *Jones* case, holding that the Illinois Constitution was much stronger than the Federal Constitution as construed by this

Court on June 8, 1942, and would not permit the reaching of such conclusion as had been reached by this Court in that case.

In the Spring of 1942, the Supreme Court of Appeals of Virginia, in the case of *McConkey v. Fredericksburg*, 179 Va. 550, 19 S. E. 2d 682, declared unconstitutional the ordinance in question providing for payment of a license tax because a burden upon the fundamental personal rights of Jehovah's witnesses to distribute literature and simultaneously receive money contributions.

The Court of Appeals of New York, in the case of *People v. Barber*, supra, decided January 7, 1943, refused to construe the license tax ordinance of Irondequoit so as to include the preaching activity of Jehovah's witnesses, because the Court stated that to do so would make the ordinance unconstitutional, and in order to avoid declaring the ordinance unconstitutional, it was held not to include the preaching activity of Jehovah's witnesses. In that case, among other things, the Court of Appeals, said:

"Upon this appeal we must decide the question whether the ordinance, properly construed, requires a member of a religious sect to obtain a license in order to be permitted to sell or offer to sell the Bible and religious tracts without profit to himself, before we reach any question whether the ordinance so construed would infringe the rights of freedom of worship, and of freedom of speech and press, guaranteed not only by the Constitution of the United States but in perhaps even plainer language by the Constitution of the State of New York. Parenthetically we may point out that in determining the scope and effect of the guarantees of fundamental rights of the individual in the Constitution of the State of New York, this court is bound to exercise its independent judgment and is not bound by a decision of the Supreme Court of the United States

limiting the scope of similar guarantees in the Constitution of the United States. . . .

"The Bill of Rights embodied in the Constitutions of the state and nation is not an arbitrary restriction upon the powers of government. It is a guarantee of those rights which are essential to the preservation of the freedom of the individual—rights which are part of our democratic traditions and which no government may invade. Where a legislative body has sought to invade a field from which under the Bill of Rights the government is excluded, and has violated rights guaranteed by the Constitution, the courts must refuse to recognize or sanction the legislative decree—but legislative bodies are no less responsible than the courts for the preservation of the liberties of the individual, guaranteed by the Bill of Rights, and legislative bodies, as a general rule, accept no less sincerely the democratic traditions and principles which the Bill of Rights expresses. We may not impute to a legislative body an intent to adopt a statute or ordinance which might be used as an instrument for the destruction of a right guaranteed by the Constitution which executive and legislative officers of government, no less than judges, are sworn to maintain. For that reason an ordinance or statute should be construed when possible in manner which would remove doubt of its constitutionality, and possible danger that it might be used to restrain or burden freedom of worship or freedom of speech and press. . . .

" . . . We conclude this opinion by a quotation from that brief [filed by the Committee on Civil Rights of the New York State Bar Association, the Committee on the Bill of Rights of the Association of the Bar of the City of New York, and the Committee on Civil Rights of the New York County Lawyers Association, *amicus curiae*]: "It may seem to some that appellant's activities were of such a character that, at this critical

period in world history, the Courts and the Bar need not be particularly concerned with their repression. But, if appellant's activities involved the exercise by him of fundamental rights guaranteed by the Federal and State Constitutions, the violation of those rights cannot be disregarded as of trivial consequence. Each case of denial of rights to an individual or to a small minority may seem to be relatively unimportant, but we know now, more surely than ever before, that callousness to the rights of individuals and minorities leads to barbarism and the destruction of the essential values of civilized life. We can find no reason to doubt that the ordinance was not intended to furnish an instrument by which the right of any group to spread its religious beliefs, or even social opinions, could be curbed."

See, also, *Hough v. Woodruff*, supra

Similar conclusions have been reached by United States District Courts in the cases of *Douglas v. Jeannette*, supra; *Reid v. Brookville et al.*, 39 F. Supp. 30; *Borchert v. City of Ranger et al.*, 42 F. Supp. 577.

Furthermore, the license tax law cannot be distinguished from the ordinances declared unconstitutional in *Lorell v. Griffin*, supra, and *Schneider v. State*, supra. The ordinances in those cases provided for the obtaining of a license or permit from the city manager and chief of police, respectively. Those cities required the license for which no fee or price was asked. Here the City of Jeannette requires a fee or the payment of a tax before the license can be obtained. One must thus purchase his privileges secured by the Constitution against abridgment. The Irvington and Griffin ordinances are admittedly unconstitutional. By greater force of reasoning the ordinance here involved is unconstitutional because it denies the right to distribute literature, except to those wealthy enough to pay for the privilege of exercising their constitutional rights or distribute

broad-sides free and without charge. One financially unable to pay is denied the privilege. The right thus becomes the prerogative only of the well-to-do and ultrarich.

CONCLUSION

All well informed persons who have followed the history of the persecution of Jehovah's witnesses in the United States are well aware of the fact that the enemies of such Christians who have engineered their persecution are also "home grown enemies" of the Bill of Rights. Such persecutors are thus enemies of every person who desires and cherishes liberty.

The fundamental personal rights guaranteed in the First Amendment—made applicable against the states by the Fourteenth—are assigned by this Government as the basic reasons for resisting the aggression of the Axis powers, and for this cause the people have dedicated a needed gigantic army to remove forever from the earth this threat of the totalitarian nations against these freedoms.

While mechanized armies are locked in battle in various parts of the earth to determine whether or not these liberties shall remain, there continues to be prosecuted a persistent fight and internal aggression against the four freedoms on the "home front" by misapplication of laws and ordinances to stop the preaching activities of Jehovah's witnesses. Whether the prosecutors of such internal aggression realize it or not, they have blindly attempted to "pull the house down" upon Jehovah's witnesses, in utter disregard of the fact that in so doing they are destroying the foundation and corner stone of democracy, their own place of refuge.

Justice Brandeis aptly describes the threat of such persecution thus: "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding." (Dissenting in *Olmstead v. United States*, 277 U. S. 479.)

Jehovah's witnesses, at the cost of name, reputation, property, fortune and even life itself, have resisted and continue to resist this all-out assault against liberty by carrying on their house-to-house and public-street preaching, in spite of overwhelming odds, and at the same time defending and pushing on in the courts the fight against the internal aggressors.

They have reached this Court time and again in numerous cases to enable this Court to discharge its duty in this time of peril by expounding the Constitution and the Bill of Rights so as to cover the liberties of unpopular minorities as well as the popular majority. In all these battles it must be admitted that Jehovah's witnesses are *fighting on the home front for liberty*.

The attitude shown this internationally unpopular group of Christians known as Jehovah's witnesses determines the fate of the nation: whether it remains a democracy while blood is shed at farflung battle-fronts by its soldiers for the life of the Constitution, or whether the nation will turn totalitarian by shelving the Bill of Rights "for the duration" — as a *relic* never again to be unwrapped.

Above this international issue there is a much greater issue to be decided by the opposers of Jehovah's witnesses as stated by Judge Gamaliel concerning Jehovah's witnesses of ancient time—

"And now I say unto you, Refrain from these men and let them alone: for if this counsel or this work be of men, it will come to nought: but if it be of God, ye cannot overthrow it: lest haply ye be found even to fight against God."—Acts 5:38, 39.

Respectfully and confidently submitted,

HAYDEN C. COVINGTON

117 Adams St., Brooklyn, N. Y.

Attorney for Petitioners

IN THE

Supreme Court of the United States

Nos. 480, 481, 482, 483, 484, 485, 486, 487,

October Term, 1942

ROBERT MURDOCK, JR., ANNA PERISICH,
WILLARD E. MOWDER, CHARLES SEDERS,
ROBERT LAMBORN, ANTHONY MALTEZOS,
ANASTASI TZANES AND ERLAINE TZANES,

Petitioners

COMMONWEALTH OF PENNSYLVANIA

(City of Jeannette)

Respondent

ANSWER OF CITY OF JEANNETTE TO PETI
TION FOR WRITS OF CERTIORARI TO THE
SUPERIOR COURT OF PENNSYLVANIA

Filed at Trenton, N. J.

Submitted to the Court at
Jeannette

Lewis G. Coal Bldg. Co., Inc.
Greensburg, Pa.

Answer to Petition

IN THE
SUPREME COURT OF THE UNITED STATES

Nos. 480, 481, 482, 483, 484, 485, 486, 487,
October Term, 1942

ROBERT MURDOCK, JR., ANNA PERISICH, WIL-
LARD L. MOWDER, CHARLES SEDERS, ROBERT
LAMBORN, ANTHONY MALTEZOS, ANASTASIA
TZANES, AND ELLAINE TZANES,

Petitioners

v.

COMMONWEALTH OF PENNSYLVANIA
(City of Jeannette),

Respondent.

**ANSWER OF CITY OF JEANNETTE TO PETITION
FOR WRITS OF CERTIORARI TO THE SUPERIOR
COURT OF PENNSYLVANIA**

By way of answer to the petition for writs of certiorari in the above-entitled case, the City of Jeannette, respondent, shows:

The record in this case does not present to this Court the question of the reasonableness of the tax imposed by Ordinance No. 60 of the City of Jeannette. This question was not raised in the Mayor's Court, or in any of the State Courts. The amount of the tax, as the ordinance plainly shows, is \$1.50 per day, or if a permit is taken on

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a weekly basis, the sum of \$1.00 per day or less, and not \$10.00 per day, as set forth in the petition.

Perhaps, the best answer to the tortured statement of facts, set forth in paragraph 7 of the petition, would be to quote from the testimony of witnesses called on behalf of the Commonwealth and on behalf of the defendants in the Court below. This testimony has been printed at length in the Record which was before the Superior Court of Pennsylvania, and is a part of the record in this case.

For the convenience of the Court, the page numbers of the Superior Court Record are designated "S. R." in this reply.

Othmar Seiler testified with reference to the petitioners, Ellaine Tzanes and Anastasia Tzanes, that he was at his home on February 25th, 1940, "when the two defendants came to his house and after being admitted to the house asked him to purchase a book called 'Creation', stating that the price was 25 cents. They also offered, for the sum of 25 cents, to sell him a Bible which they stated was worth in excess of Three Dollars. After further conversation, he purchased the book and paid the sum of 25 cents." (S. R. 14)

With reference to Willard Mowder and Charles Seders, Regis Detruf said that in response to a call he "went out of the house and saw them on the porch of the adjoining house, and asked them what books they were selling and the price. One of the defendants advised him the price was 25 cents. He agreed to purchase the book 'Salvation', and paid the defendants the sum of 25 cents." (S. R. 24)

Concerning the petitioners, Murdock and Lamborn, several witnesses testified that they "solicited them to purchase books, and after some conversation, the witness,

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Virginia Clair, was told the price was 25 cents. She paid the same and received the book 'Salvation.' (S. R. 25)

Anna Perisich and Anthony Maltezos, according to the witness, Francis Kramer, came to his house late in the afternoon of February 25th, "solicited him to buy books. He inquired the price, and was told they were 25 cents each. He purchased the book 'Salvation', and paid the sum of 25 cents. The defendants tried to persuade him to purchase a Bible for the sum of 25 cents, claiming it was worth more than \$3.00" (S. R. 25).

None of the petitioners had applied for or received the license required by Ordinance No. 60 of the City of Jeannette.

The following are fair examples of the testimony with reference to what these petitioners said or did as they went from door to door—

"A. Well, they said they were,—they came to the door and my brother answered the door and said we weren't interested. They left and I went out on the porch and I hollered to that fellow right there (indicating Charles Seders); and I said, 'How much are your books?' and he said 25c. I said 'May I see one?' He said, 'Yes, sir.' So he came over and showed me one and I looked at it and I said, 'I will take one.'"

(Testimony of Regis Detruf, S. R. 32)

"Q. Did they say anything about the price of the pamphlet?

A. They did. They said usually what they got for them was 25c. They set their own price. It wasn't no donation or anything. That is what they said, the price of them were a quarter.

Q. Who was it that paid the quarter?

Answer to Petition

A. Virginia Clair paid the quarter."

(Testimony of Herbert Baughman, S. R. 41)

A. Hine and Anna Perisich, she came in along too. So they put the record and played it, the record run down, and I said, 'It's a damn good record.' That's the words I said. So they asked me if I was interested in buying any books. I said I might. So they handed me this book, Salvation. I opened it up and started to look at it and I asked them how much they charged for these books. They say 25c. So I hesitated for a moment, and I said, 'All right, I will take one,' and gave them a quarter.

Q. Who did you give the quarter to?

A. To Anna Perisich. I gave a quarter to Anna and she gave me the book, and she says, 'I am going to give you this book.'

Q. By the book you mean the pamphlet called Government and Peace?

A. Government and Peace, yes, sir. I said 'O. K., thanks.' I said to them, 'Have you got any Bibles?' He says, 'Yes, the Bible will cost 25c more.' He said, 'You'll get a bargain on that.'

Q. Who said that?

A. This gentleman right here (indicating).

Q. That is Anthony Maltezos?

A. Yes. He says, 'You're getting a bargain on that; that book is worth three dollars or three and a quarter.' I said, 'No; this will be enough for me to read.' Well, they started to get their brief case and victrola put together and I said, 'I'm sorry, you both are under arrest.' They wanted to know what for. I told them for soliciting and selling books without a permit. I said, 'I'm a policeman.'

(Testimony of Francis Kramer, S. R. 52, 53)

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"A. No, my wife answered the door and they showed her a card and she called me and I went out and I just glanced through the card; I didn't read much about it, and I seen something about 25c for books at the bottom of the card. So I said to the ladies, 'Are you people selling books?' She said yes. I said, 'How much are they?' She said 'They are a quarter.' She said, 'But for 50c we could sell you this book and sell you the both.' I said, 'How much do you want for this book I have in my hand?' She said, 'That book is a quarter and if you buy the both of them you can have them for 50c.' So I just bought the one book for a quarter."

(Testimony of Othmas Seiler, S. R. 56, 57)

The petitioner, Robert Lamborn, after testifying that he had no occupation other than that of Minister of the Gospel, and that he received no pay or remuneration of any kind (S. R. 60 to 66), and after doing a great deal of sparring with evasive answers, finally testified under cross examination:

"Q. Did somebody make you a minister?

A. No.

Q. What did you do to become a minister?

A. We go out from house to house exhibiting publications.

Q. Where do you get these publications?

A. I get those publications from the Watch Tower Bible and Tract Society, Brooklyn, New York.

Q. How many publications did you have with you yesterday, the 25th?

A. I couldn't make an exact statement. I don't know.

Q. Did you have a suitcase full?

A. I had my little satchel full, yes.

Answer to Petition

Q. When had you gotten those?

A. Before I left home.

Q. That is before you left Cadiz, Ohio?

A. Yes.

Q. When did you leave Cadiz?

A. Saturday, about 11:00 o'clock in the morning.

Q. How did you go?

A. By automobile.

Q. Do you have your own automobile?

A. No; I have my dad's automobile.

Q. Have you paid for those publications?

A. Yes.

Q. How much did you pay for them?

A. I couldn't say the exact amount, because I didn't know how much publications that I had.

Q. How much do you ordinarily pay for this book Salvation?

A. It is offered to the public on a contribution of 25c.

Q. How much do you pay for it?

A. Twenty cents.

(S. R. 66, 67)

Although the members of Jehovah's Witnesses insist upon calling the price for which they buy and the price for which they sell their books a "Contribution", the transaction is so far commercial that they may obtain the books on credit.

Q. Did you ever obtain any without making a contribution?

A. On credit I have, yes.

Q. You mean they trusted you for the contribution that you had to later make?

A. Yes.

(Testimony of Robert Murdock, Jr., S. R. 83)

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Willard Mowder, much younger than the other petitioners, and much more direct in his answers, testified:

“Q. Mr. Mowder, where do you live?

A. Virginville, West Virginia.

Q. What is your occupation, Mr. Mowder?

A. None at all.

Q. Why did you come to Jeannette yesterday?

A. My main reason was I wanted to get in some kind of work that I learned that Jehovah at sometime or another would make this world a different world, and I like this kind of work very much. That is my reason for coming.”

(S. R. 96, 97)

Earl V. Singer, along with Mr. Hessler, was in charge of the delegation that canvassed the City of Jeannette on the occasion which gave rise to these appeals. He owned a trucking business in East Liverpool, Ohio, but was merely keeping “a weather eye on the business” while he devoted full time “to take to the people of good will a message of His Kingdom.” With reference to the system of buying and selling books from the Watch Tower Society, he testified:

Q. How much do you pay for these books?

A. You mean the bound books?

Q. Yes?

A. Our society has set up a system of allowing these people who devote all their time to the work of proclaiming the Kingdom Message, of giving these bound books to them on a contribution of 5c. We take them out and place them with the people,—on the contribution set by the society. That enables those who are preaching the Gospel of God’s Kingdom to buy a bite to eat once in awhile.

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Q. Exactly. So that that book costs you how much?

A. That costs me—

Q. Five cents.

A. If I would get one from the society it would cost me 5c.

Q. And when you in turn turn those books over to other solicitors do you charge as much as 20c for it?

A. I am not permitted to that.

Q. Do you have charge of what they call a company?

A. No, sir. The only way that is done, in other words, I cannot be a distributor other than going door to door with the publications, that is people who are not associated with the organization.

Q. And when you go from door to door the contribution that you expect is 25c?

A. The society sets that contribution, yes, sir.

Q. Sets that contribution?

A. That's right. It is a fund of our society set aside to aid those who give all their time to the Lord's work.

Q. And you have been giving all your time for the past year and a quarter anyway?

A. Yes, sir.

Q. And for that you get the special contribution rate of 5c, and when you exact contributions of the persons who take the books from you, the rate is the standard rate of 25c, is that right?

A. I have an automobile, that takes gasoline; I eat. That money I use to eat I get from my business, and not only that but I give many of the bound book publications to the Lord's poor who cannot afford to contribute and get the life-sustaining truths

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of Almighty God. But in the long run I give more than I receive."

(S. R. 105)

Thus it very definitely appears that these petitioners are engaging in transactions which must be branded as purely commercial. They may call the purchase price of their books "Contributions", and may term their activities in selling from door to door "The Worship of God", but this does not make the transaction any less a business matter.

Wherefore the respondent respectfully requests that the petition for issuance of eight writs of certiorari to the Superior Court of Pennsylvania be dismissed.

COMMONWEALTH OF PENNSYLVANIA,

CITY OF JEANNETTE,

By FRED B. TRESCHER,

City Solicitor.

*Argument***BRIEF**

In deciding this case, the Superior Court of Pennsylvania weighed the constitutional right of citizens of the City of Jeannette to be secure in their homes and the right and obligation of the City to protect them in their homes against the claimed right of members of Jehovah's Witnesses to enter homes without the payment of a modest license fee imposed by the ordinance for the purpose of selling books.

Itinerant vendors, who go from door to door into homes, for the purpose of soliciting orders for or selling merchandise of any kind have been subjected to the payment of a license fee in Pennsylvania from earliest times. The decisions which sustain the authority of the State to levy such a tax do so partly on the theory that it is a revenue producing measure and partly on the theory that the fee is regulatory. It subjects itinerant vendors to the payment of a tax much the same as permanent businesses are subject to the payment of a mercantile tax. It is regulatory in the sense that known criminals and wholly irresponsible persons will not apply to or register with the municipal authorities. When a person who engages in business which requires him to visit homes and go into many of them has taken out a license and paid the small fee, the municipal authorities have a record of his name and address, and have an opportunity to check on the individual while he is engaged in his activities. The citizens are thus assured of some measure of responsibility on the part of the canvasser. They have the knowledge that he is registered with public authorities, and are free from the almost constant annoyance that would follow in the case of unrestricted license.

"The effect of the ordinance would seem to be to subject persons who would otherwise pay no license for the privilege of doing business within the borough, to the duty of paying something for the privilege, when they undertake to exercise it without incurring the expense of a mercantile license. * * * The peddling of 'other articles' besides market produce, includes everything which may be disposed of by the method called 'hawking and peddling', and we cannot say that this does not include canvassing from house to house and soliciting orders for books."

Warren Borough v. Geer, 117 Pa. 207, 211, 212 (1887).

But it is the manner of sale that makes a peddler, * * * The business of the itinerant vendor is the same in either case, and so is the inconvenience and annoyance he inflicts on others. The merchant or storekeeper is a resident, has a fixed place of business, where his goods are shown to those who come in search of what they need, where he can be reached by process, and compelled to make good his guaranty of the quality of his wares. The peddler is a transient, with no fixed place of business, who seeks customers by invading their homes, and makes sales by persuading people to buy what they do not need, and who, by the time he is wanted to answer for his representations and engagements, is out of sight and out of reach of process. It is this matter of tracking a laboring man or woman into the home, and laying seige to him or her by an unscrupulous and self-possessed stranger, who is after money and has no delicate scruples about the manner in which he gets it, that has made the peddler a dread in the country and in the villages, and has led the law makers in this and other states to put the business under strict regula-

tions when it is not wholly forbidden. * * * The next point taken by the defendants is that, under the constitution of the state, an owner of goods has an indefensible right to carry them when and where he pleases in search of buyers. * * * Our laws relating to peddlers are directed not against the right of acquisition, but the manner in which some people exercise that right; not to the right of an owner to sell his goods, but to the manner in which he may sell them. Our peddling laws are therefore not in violation of the constitutional rights of the owners of goods, but are a wise exercise of the police power over the manner in which goods, wares, and merchandise shall be sold."

Commonwealth v. Gardner, 133 Pa. 284, 289, 290 (1890).

1 The ordinance of the City of Jeannette imposes no police censorship. It gives no discretion to anyone to say that Jehovah's Witnesses may not sell their books while other people may sell theirs. It merely requires all persons who engage in the particular type of business activity to obtain a license. The City of Jeannette has never undertaken to enforce the ordinance against members of Jehovah's Witnesses who go from door to door and hand in the type of card which is found on S. R., pages 77 and 78. It has never interfered with members of Jehovah's Witnesses who stand on the street corners and sell the Watch Tower magazine. There are undoubtedly a number of sincere and well meaning members of Jehovah's Witnesses who undertake to keep themselves within the bounds of the licensing ordinance. However, there are undoubtedly a great many who are engaging in commercial activities and who actually go from door to door and into homes and sell for profit. The ordinance of the City of Jeannette affects only those in the latter

Argument

category. With respect to each of the petitioners who were convicted before Mayor O'Connell, there is positive evidence of sales.

In *Schneider v. Town of Irvington*, 308 U. S. 147, this Court was careful to say:

"We are not to be taken as holding that commercial soliciting, and canvassing may not be subjected to such regulation as the ordinance require."

Ordinance No. 60 of the City of Jeannette was before this Court in *Stewart v. Commonwealth of Pennsylvania*, (City of Jeannette), 309 U. S. 674, and the petition for certiorari there asked, was dismissed.

Bowden v. City of Fort Smith, Arkansas, 62 S. Ct. 1231, decided June 8th, 1941, fairly and adequately disposes of the contention that the imposition of a license fee to peddle books from house to house violates the petitioners' rights of free speech, press and worship.

The Courts of Pennsylvania and this Court, as well as the State and municipalities of Pennsylvania, have already gone far in assuring to Jehovah's Witnesses and to all other religious groups the greatest latitude in expressing their religious views. They are free to gather together in homes, in meeting places or wherever they see fit for the purpose of worship. They are at perfect liberty to use the streets for the purpose of obtaining converts either by giving away or selling their literature.

The right of privacy, the right of citizens to be secure in their homes, is at least equal with the high privilege of press and worship. When the religious tenets of a particular group call upon them to engage in an activity which is purely commercial and secular, there is no reason why the constitutional protection thrown about homes should

Argument

be sacrificed. In such case, the religious freedom of the minority ends at the doorstep of the majority.

Respectfully submitted,

FRED B. TRESCHER,

Solicitor for the City of Jeannette.



IN THE
Supreme Court of the United States

OCTOBER TERM, 1942

Nos. 480-487

ROBERT MURDOCK, JR., ANNA PERISICH,
WILLARD L. MOWDER, CHARLES SEDERS,
ROBERT LAMBORN, ANTHONY MALTEZOS,
ANASTASIA TZANES, and ELAINE TZANES,
Petitioners

VS.

COMMONWEALTH OF PENNSYLVANIA
(City of Jeannette)
Respondent

On Certiorari to the Superior Court of Pennsylvania

RESPONDENT'S BRIEF

FRED B. TRESCHER,
Attorney for Respondent.

Irwin Gas Coal Building
Greensburg, Pa.

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COUNTER-STATEMENT OF THE CASE

The distorted version of the facts set forth in petitioners' brief, and upon which the petitioners ask this Court to decide the case, cannot be permitted to go unchallenged.

The only brief served on the respondent at the date this reply is being prepared is a typed one. It is assumed that the page numbers in the printed brief ultimately presented to this Court will correspond with the page numbers in the typed brief. Page references in this reply must necessarily apply to the typed brief.

Footnote 1 on page 2 of petitioners' brief attempts to assert that the petitioners were "prosecuted for peddling and huckstering without payment of the \$10.00 daily license" under Section II of the ordinance. If there is any doubt on this point, it will be cleared up by the verbatim quotation from the information upon which the petitioners were arrested and convicted, which is printed on page 4 of the petitioners' brief. It shows they were prosecuted for a violation of Section I of the ordinance, which provides for a license fee of \$1.50 per day, \$7.00 per week, or \$12.00 for two weeks.

The petitioners would prefer to have their activities described by Mr. Charles R. Hessler, "Supervising Minister for Jehovah's Witnesses in the Pittsburgh area", rather than by the Commonwealth's witnesses. Mr. Hessler was not a witness in any of these cases. Only four of the eight defendants charged with the violation of the city ordinance offered themselves as witnesses. These four did not materially contradict the testimony offered on behalf of the Commonwealth.

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Charles R. Hessler did appear as a witness before the District Court of the United States for the Western District of Pennsylvania in the injunction proceeding, which is before this Court in *Douglas v. City of Jeannette and John J. O'Connell, Mayor*, at No. 450 October Term, 1942. Reference is made by the petitioners to his testimony in that case. Respondent's brief in that action will deal more fully with Mr. Hessler's testimony. It is sufficient to say here that a more evasive and more vacillating witness would be difficult to find (*Douglas v. City of Jeannette*, No. 450 October Term, 1942, 42 to 85, 106 to 114).

Regardless of what may be the practice of Jehovah's Witnesses in other parts of the country, and irrespective of what may be shown or admitted in records of other cases before this Court, the testimony in this case shows that their activities in Jeannette were purely commercial. They were going from door to door, selling and delivering their merchandise. They were bargaining by the methods that itinerant vendors ordinarily employ. In addition, they were extending their activities far beyond any point of reasonable solicitation. They were annoying the residents to the extent of being a nuisance. There were one hundred four so-called ministers in town (101a).

The following is a fair analysis of the testimony stenographically recorded at the trial:

Othmar Seiler testified with reference to the defendants, Ellaine Tzanes and Anastasia Tzanes, that he was at his home on February 25th, 1940, when the two defendants came to his house and after being admitted to the house asked him to purchase a book called "Creation", stating that the price was 25 cents. They also offered, for the sum of 25 cents, to sell him a Bible which they stated was worth in excess of Three Dollars. After further conversation, he purchased the book and paid the sum of 25 cents.

(14a)

With reference to Willard Mowder and Charles Seders, Regis Detruf said that in response to a call he "went out of the house and saw them on the porch of the adjoining house, and asked them what books they were selling and the price. One of the defendants advised him the price was 25 cents. He agreed to purchase the book 'Salvation', and paid the defendants the sum of 25 cents." (24a)

Concerning the defendants, Murdock and Lamborn, several witnesses testified that they "solicited them to purchase books, and after some conversation, the witness, Virginia Clair, was told the price was 25 cents. She paid the same and received the book 'Salvation'." (25a)

Anna Perisich and Anthony Maltezos, according to the witness, Francis Kramer, came to his house late in the afternoon of February 25th, "solicited him to buy books. He inquired the price, and was told they were 25 cents each. He purchased the book 'Salvation', and paid the sum of 25 cents. The defendants tried to persuade him to purchase a Bible for the sum of 25 cents, claiming it was worth more than \$3.00." (25a)

None of the defendants had applied for or received the license required by Ordinance No. 60 of the City of Jeanette. The following are fair examples of the testimony with reference to what these defendants said or did as they went from door to door:

"A. Well, they said they were—they came to the door and my brother answered the door and said we weren't interested. They left and I went out on the porch and I hollered to that fellow right there (indicating Charles Seders), and I said, 'How much are your books?' and he said 25c. I said, 'May I see one?' He said, 'Yes, sir.' So he came over and showed me one and I looked at it and I said, 'I will take one'."

(Testimony of Regis Detruf, 32a)

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Q. Did they say anything about the price of the pamphlet?

A. They did. They said usually what they got for them was 25c. They set their own price. It wasn't no donation or anything. That is what they said, the price of them were a quarter.

Q. Who was it that paid the quarter?

A. Virginia Clair paid the quarter."

(Testimony of Herbert Baughman, 41a)

A. Him and Anna Perisich, she came in along too. So they put the record on and played it, the record run down, and I said, 'It's a damn good record.' That's the words I said. So they asked me if I was interested in buying any books. I said I might. So they handed me this book Salvation. I opened it up and started to look at it and I asked them how much they charged for these books. They says 25c. So I hesitated for moment, and I said, 'All right, I will take one,' and gave them a quarter.

Q. Who did you give the quarter to?

A. To Anna Perisich. I gave a quarter to Anna and she gave me the book, and she says, 'I am going to give you this book.'

Q. By the book you mean the pamphlet called Government and Peace?

A. Government and Peace, yes, sir. I said, 'O.K., thanks.' I said to them, 'Have you got any Bibles?' He says, 'Yes, the Bible will cost 25c more.' He said, 'You'll get a bargain on that.'

Q. Who said that?

A. This gentleman right here (indicating).

Q. That is Anthony Maltzēs?

A. Yes. He says, 'You're getting a bargain on that; that book is worth three dollars or three and a quarter.' I said, 'No, this will be enough for me to

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read." Well, they started to get their brief case and victrola put together and I said, "I'm sorry, you both are under arrest." They wanted to know what for. I told them for soliciting and selling books without a permit. I said, "I'm a policeman."

(Testimony of Francis Kramer, 52a, 53a)

"A. No, my wife answered the door and they showed her a card and she called me and I went out and I just glanced through the card; I didn't read much about it, and I seen something about 25c for books at the bottom of the card. So I said to the ladies, 'Are you people selling books?' She said yes. I said, 'How much are they?' She said, 'They are a quarter.' She said, 'But for 50c we could sell you this book and sell you the both.' I said, 'How much do you want for this book I have in my hand?' She said, 'That book is a quarter and if you buy the both of them you can have them for 50c.' So I just bought the one book for a quarter."

(Testimony of Othmar Seiler, 56a, 57a)

The defendant, Robert Lamborn, after testifying that he had no occupation other than that of Minister of the Gospel, and that he received no pay or remuneration of any kind (60a to 66a), and after doing a great deal of sparring around with evasive answers, finally testified under cross examination:

"Q. Did somebody make you a minister?"

A. No.

Q. What did you do to become a minister?

A. We go out from house to house exhibiting publications.

Q. Where do you get these publications?

A. I get those publications from the Watch Tower Bible and Tract Society, Brooklyn, New York.

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Q. How many publications did you have with you yesterday, the 25th?

A. I couldn't make an exact statement. I don't know.

Q. Did you have a suitcase full?

A. I had my little satchel full, yes.

Q. When had you gotten those?

A. Before I left home.

Q. That is before you left Cadiz, Ohio?

A. Yes.

Q. When did you leave Cadiz?

A. Saturday, about 11:00 o'clock in the morning.

Q. How did you go?

A. By automobile.

Q. Do you have your own automobile?

A. No; I have my dad's automobile.

Q. Have you paid for those publications?

A. Yes.

Q. How much did you pay for them?

A. I couldn't say the exact amount, because I didn't know how much publications that I had.

Q. How much do you ordinarily pay for this book *Salvation*?

A. It is offered to the public on a contribution of 25c.

Q. How much do you pay for it?

A. Twenty cents.

(66a, 67a)

Although the members of Jehovah's Witnesses insist upon calling the price for which they buy and the price for which they sell their books a "Contribution", the transaction is so far commercial that they may obtain the books on credit.

Q. Did you ever obtain any without making a contribution?

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A. On credit I have, yes.

Q. You mean they trusted you for the contribution that you had to later make?

A. Yes."

(Testimony of Robert Murdock, Jr., 83a)

Willard Mowder, much younger than the other defendants, and much more direct in his answers, testified:

Q. Mr. Mowder, where do you live?

A. Virginville, West Virginia.

Q. What is your occupation, Mr. Mowder?

A. None at all.

Q. Why did you come to Jeannette yesterday?

A. My main reason was I wanted to get in some kind of work that I learned that Jehovah at sometime or another would make this world a different world, and I like this kind of work very much. That is my reason for coming."

(96a, 97a)

Earl V. Singer, along with Mr. Hessler, was in charge of the delegation that canvassed the City of Jeannette on the occasion which gave rise to these appeals. He owned a trucking business in East Liverpool, Ohio, but was merely keeping "a weather-eye on the business" while he devoted full time "to take to the people of good will a message of HIS KINGDOM." With reference to the system of buying and selling books from the Watch Tower Society, he testified:

Q. How much do you pay for these books?

A. You mean the bound books?

Q. Yes.

A. Our society has set up a system of allowing those people who devote all their time to the work of proclaiming the Kingdom Message, of giving these bound books to them on a contribution of 5c. We take

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them out and place them with the people—on the contribution set by the society. That enables those who are preaching the Gospel of God's Kingdom to buy a bite to eat once in awhile.

Q. Exactly. So that that book costs you how much?

A. That costs me—

Q. Five cents?

A. If I would get one from the society it would cost me 5c.

Q. And when you in turn turn those books over to other solicitors, do you charge as much as 20c for it?

A. I am not permitted to do that.

Q. Do you not have charge of what they call a company?

A. No, sir. The only way that is done—in other words, I cannot be a distributor other than going door to door with the publications, that is people who are not associated with the organization.

Q. And when you go from door to door the contribution that you expect is 25c?

A. The society sets that contribution, yes, sir.

Q. Sets that contribution?

A. That's right. It is a fund of our society set aside to aid those who give all their time to the Lord's work.

Q. And you have been giving all your time for the past year and a quarter anyway?

A. Yes, sir.

Q. And for that you get the special contribution rate of 5c; and when you exact contributions of the persons who take the books from you, the rate is the standard rate of 25c, is that right?

A. I have an automobile, that takes gasoline; I

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eat. That money I use to eat I get from my business, and not only that but I give many of the bound book publications to the Lord's poor who cannot afford to contribute and get the life-sustaining truths of Almighty God. But in the long run I give more than I receive."

(104a, 105a)

(Page references are to the record in the Superior Court of Pennsylvania, which, so far as counsel for the respondent knows, is the only record lodged with this Court.)

Thus it very definitely appears that the petitioners who were from a number of different localities, both inside and outside of Pennsylvania, were engaged in the City of Jeannette in transactions which must be branded as purely commercial. The record further shows that the religious end was purely incidental to the business object; that there is an ample spread of profit¹ to permit the payment of the modest license fee imposed; that there is a definite need for a curb on the unbridled extremes to which the co-religionists of the petitioners intrude themselves into homes in the City of Jeannette for the purpose of selling their books; and that the ordinance is a police measure designed to protect citizens in their homes as well as an exercise of the sovereign power of the state to tax.

¹ 400% in the case of full time ministers—not shown as to companies.

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The business of an itinerant vendor in Pennsylvania has been, from earliest times, regarded as a legitimate object of taxation and one fraught with peril to the residents, and thus subject to regulation. This is particularly so where the seller carries his merchandise from door to door, and the very manner of doing business necessitates his entrance into homes. The activity may be engaged in by the most high minded individuals and it may be engaged in by crooks.

The merchant may be perfectly honorable and upright, and interested only in giving fair value in return for the money he receives. In so doing, he is exercising a right guaranteed by the Constitution—that of earning a livelihood. He is, however, subject to the payment of a tax the same as the merchant who sets himself up in a permanent place of business.

The seller may be interested in advertising a particular commodity and getting it into the hands of people for use so that they may appreciate its particular qualities. He may be selling it below cost. He, too, is exercising a lawful calling, and one that is guaranteed by the Constitution.

A publisher may feel that his particular book or writing is a special message on politics or economics or social problems, and in selling it from door to door, he may be motivated solely by a desire to place this message in the hands of people who may benefit by it. Profit may never enter his mind, yet he renders himself liable to the payment of tax notwithstanding the fact that he, like others, is exercising a constitutional right.

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The Tenth Amendment reserves to the States the powers not delegated to the United States by the Constitution and not prohibited to them by that document. The sovereign powers of the States remain unaltered and unimpaired except so far as they were granted to the United States. *Buffington v. Day* (Mass. 1871), 11 Wall 124, 20 L. Ed. 122.

There is no suggestion in the Constitution or elsewhere that either the States or the Federal Government are forbidden to tax individual rights which are above and beyond the power of either State or the Federal Government.

If this were the case, there would be few, if any, activities from which our government could derive their means of existence. An American citizen can point to almost any activity in which he may engage and say with just pride "I am exercising a right with which my government has no right to interfere." He may be referring to his right to own property, to his right to exercise a particular trade, calling or profession, to his right to move about from place to place, yet no one has ever suggested that this person's rights are to be exercised free of tax.

"The taxing power of a state is one of its attributes of sovereignty; it exists independently of the Constitution of the United States and undervived from that instrument, and may be exercised to an unlimited extent upon all property, trades, business and avocations existing or carried on within the territorial boundaries of the state except so far as it has been surrendered to the federal government, either expressly or by necessary implication."

Union-Pacific Railroad Company v. Peniston (Nebraska 1873), 18 Wall 29, 24 L. Ed. 787.

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"Whatever exists within its territorial limits in the form of property, real or person, with the exceptions stated, is subject to its laws; and also the numberless enterprises in which its citizens may be engaged. These are subject to state regulations and state taxation, and there is no federal power under the Constitution which can impair the exercise of this state sovereignty."

Nathan v. Louisiana (1850), 8 Howard 82, 12 L. Ed. 999.

"With the exception of the powers surrendered by the Constitution of the United States, the people of the several states are absolutely and unconditionally sovereign within their respective territories. It follows that they may impose what taxes they think proper upon persons or things within their domain, and may apportion them according to their discretion and judgment. * * * There is nothing in the Constitution of the United States to forbid it, nor any authority given to this court to question the right of a state to bind itself by such contracts, whenever it may think proper to make them."

Ohio L. Ins. Co. v. Debolt (Ohio 1853), 16 Howard 428, 14 L. Ed. 997.

Pennsylvania has for upwards of one hundred years taxed "all offices, posts of profit, professions, trades and occupations," (Act of April 29, 1844, P. L. 486, Section 2; 1927, April 28; P. L. 491, Section 1, 72 PS 478), as well as real and personal property.

The Third Class City Act of June 23, 1931, P. L. 932, Art. XXVI, Section 2601, its supplements and amendments, 53 PS, Section 12198-2601, permits the imposition of a tax on persons who canvas and solicit and sell from

door to door within the municipality, and ordinance No. 60 imposes the tax.

How can this Court draw a distinction between the tax on the occupation of a laborer, carpenter, doctor, lawyer and housewife and that of itinerant vendor? It may seem a little bit harsh, but the laws of Pennsylvania require the assessors to include "all single freemen above the age of twenty-one years who shall not follow any occupation or calling." Act of April 15, 1834, P. L. 509, Section 4, 72 PS 5071.

Not even the profession of clergyman is exempt from taxation.

"So far, from seeing any constitutional objection to the imposition of taxes upon clergymen, as well as upon other professions, it has been seriously questioned whether they can constitutionally be exempted from their share of the public taxes. The constitution declares that 'no man can of right be compelled to support any place of worship, or to maintain any ministry against his consent.' A numerous class of our citizens still hold to the faith of the founders of this Commonwealth, and bear their testimony against what they call a 'hireling ministry.' Many others read their Bibles in their own way, disclaiming all connection with religious congregations. If these classes of citizens should be compelled to pay more than their just proportion of taxes, in order that ministers of the gospel might be exempt, it is substantially the same thing as collecting the excess of taxes and paying it to the ministers to aid in maintaining them. Such a partial rule of taxation compels the Protestant to aid in maintaining the ministry of the Roman Catholic, constrains both to the aid in supporting the Jewish priesthood; forces each to support a form of religion

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which his conscience rejects, and compels the opponents of all to aid in supporting all. These suggestions may serve to show that the claim to constitutional exemption is not only rejected, but met by a counter claim, which may deserve consideration when the question arises. At present it is sufficient to say that the Act of Assembly does not exempt the 'profession' of a clergyman from taxation."

Miller v. Kirkpatrick, 29 Pa. 226, 231 (1857).

The tax in suit is not strictly an occupational tax. It is a tax on a particular method of doing business. The Pennsylvania cases so holding will be later-discussed in this brief. The foregoing illustrations are given for the purpose of showing that much more direct taxes on religion than those imposed by Ordinance No. 60 have been the established practice in Pennsylvania for a long period of time. First, Second and Third Class cities in Pennsylvania, and most of the school districts have substituted per capita taxes for occupational taxes. So far as counsel has been able to discover, no minister has ever sought relief from the payment of this tax because it is a tax on religion, and no publisher has ever sought relief on the ground that it is a tax on free speech or free press. Many of the churches throughout Pennsylvania own income producing property. The income may be devoted entirely to the support of the church, and yet the real estate so owned must contribute its share to the tax burden. (By Act of Assembly, church property actually devoted to worship is exempt).

The respondents do not contend that the ordinance is solely a revenue producing measure. It is regulatory as well; and is a constitutional exercise of sovereign power from either point of view. Under the decisions of Penn-

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sylvania, similar ordinances have been upheld for many years.

The activity engaged in by the defendants in this case differs in no respect whatever from that which has for many years been the subject of regulation and license in Pennsylvania.

"The effect of the ordinance would seem to be to subject persons who would otherwise pay no license for the privilege of doing business within the borough, to the duty of paying something for the privilege, when they undertake to exercise it without incurring the expense of a mercantile license. * * * The peddling of 'other articles' besides market produce, includes everything which may be disposed of by the method called 'hawking and peddling,' and we cannot say that this does not include canvassing from house to house and soliciting orders for books."

Warren Borough v. Geer, 117 Pa. 207, 211, 212 (1887).

"But it is the manner of sale that makes a peddler. * * * The business of the itinerant vendor is the same in either case, and so is the inconvenience and annoyance he inflicts on others. The merchant or store-keeper is a resident, has a fixed place of business, where his goods are shown to those who come in search of what they need, where he can be reached by process, and compelled to make good his guaranty of the quality of his wares. The peddler is a transient, with no fixed place of business, who seeks customers by invading their homes, and makes sales by persuading people to buy what they do not need, and who, by the time he is wanted to answer for his representations and engagements, is out of sight and out of reach of process. It is this matter of tracking a laboring man

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or woman into the home; and laying siege to him or her by an unscrupulous and self-possessed stranger, who is after money and has no delicate scruples about the manner in which he gets it, that has made the peddler a dread in the country and in the villages, and has led the law makers in this and other states to put the business under strict regulations when it is not wholly forbidden. * * * The next point taken by the defendants is that, under the constitution of the state, an owner of goods has an indefeasible right to carry them when and where he pleases in search of buyers. * * * Our laws relating to peddling are directed, not against the right of acquisition, but the manner in which some people exercise that right; not to the right of an owner to sell his goods, but to the manner in which he may sell them. Our peddling laws are therefore not in violation of the constitutional rights of the owners of goods, but are a wise exercise of the police power over the manner in which goods, wares, and merchandise shall be sold.

Commonwealth v. Gardner, 133 Pa. 284, 289, 290 (1896).

There is involved in this case, not only the constitutional rights of the petitioners, but the constitutional right of the citizens of Jeannette to be protected in their homes. The business of soliciting from door to door affords a splendid opportunity for people of evil disposition to perpetrate frauds, to ascertain the means of access to a house, to determine the number and value of articles which may be the subject of theft, to know the number of occupants, and the likelihood of their being present at a particular time, and to dispose of worthless articles at a price much beyond their actual value.

It is true the ordinance in suit does not attempt to

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regulate the hours at which solicitation from house to house is permitted. The class of people at whom the ordinance is aimed would not be interfered with by regulation of hours. They could lay their plans, get the information desired, make the acquaintances they wished to make at any hour which would be fixed.

The place and manner is controlled in that the ordinance applies only to people who go from door to door and into homes for the purpose of making sales. Such persons are required to register their names and addresses, pay the small daily or weekly fee and carry with them a permit. Experience has shown that as a rule people with improper motives or with jail records will not register with the city authorities, and will not obtain a permit. If such persons do register, a record of name and address is available for the use of the police if harm does come or if fraud is perpetrated.

The City of Jeannette is a comparatively young municipality. It was founded in 1890. It grew rather rapidly, and now has a population of approximately seventeen thousand. As early as 1898, the need for such a protective measure for the inhabitants developed. The ordinance has been in force and has been effective for the purpose; it is intended to accomplish for some forty five years. In other communities in Pennsylvania, similar ordinances have been in effect for a much greater period of time.

These defendants and other members of Jehovah's Witnesses are at perfect liberty to sell their books, tracts and magazines on the streets of the City of Jeannette at any hour of the day or night without payment of any tax and without a license of any kind. They avail themselves of this privilege regularly.

The petitioners may employ the street corners to preach the gospel as they see it either by the printed or

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spoken word. They have on occasions in the past rented public meeting places and advertised and held meetings, and they are privileged to do it in the future. The City of Jeannette maintains a public auditorium. This, too, is available to Jehovah's Witnesses absolutely free of charge with light, heat and janitor service thrown in, at no cost, if they have as many as one convert who is a resident of the City of Jeannette and willing to make the request.

The mere solicitation of funds by going from door to door and handing in a card has never been interfered with in the City of Jeannette.

It is only where Jehovah's Witnesses go from door to door and into homes and actually sell their books and tracts that they bring themselves within the provisions of this ordinance. The record in this case discloses beyond any question that the methods employed were those of bargain and sale, that the practices of the petitioners with their so-called companies and with the Watch Tower Bible and Tract Society were those employed in ordinary commercial transactions. Typical examples of expressions used are:

"Yes, the bible will cost 25 cents more. He said, 'You will get a bargain on that.' " (52a)

"Yes, he says 'You are getting a bargain on that. That book is worth \$3.00 or \$3.25.' " (53a)

"I said, 'How much are your books,' and he said '25 cents.' I said 'May I see one?' He said 'Yes', so he came over and showed me one and I looked at it, and I said 'I will take one.' " (32a).

"So I said to the ladies ~~are your~~ people selling books? She said 'Yes.' I said 'How much are they?' She said 'They are a quarter.' She said 'But for 30

"cents we could sell you this book and sell you the both." (96a).

The price at which the petitioners obtained the books varied. Earl V. Singer, who called himself a "full time minister," and who said he was an assistant zone manager for the Watch Tower Bible & Tract Society, purchased books at five cents a piece and sold them for a quarter (105a). His explanation was quite frank—

"I have an automobile, that takes gasoline; I eat. That money I use to eat I get from my business, and not only that but I give many of the bound book publications to the Lord's poor who cannot afford to contribute and get the life sustaining truths of Almighty God. But in the long run I give more than I receive." (105a).

The margin of four hundred per cent profit is not bad remuneration for any book salesman.

If the testimony of the other petitioners is to be accepted, they purchased the books at twenty cents and sold them at a quarter. There is serious question whether the petitioners' testimony can be accepted.

Robert Lamborn, for example, testified that he lived at Cadiz, Ohio; that he was a minister; that he had no other occupation, and that he received no pay for his work (60a, 64a, 65a). The work was done, he said "Free of charge, on my own expense." (65a). On cross examination, he was evasive. He did not know how many books he had or how much he paid for them (66a, 67a). He finally said he paid twenty cents each at the Cadiz, Ohio Company of Jehovah's Witnesses (67a). He had, he testified, previously bought such books on credit. It ultimately developed that the Cadiz, Ohio Company of Jehovah's Witnesses was his own home (69a). The numerous companies and

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organizations, all instrumentalities of the Watch Tower Bible & Tract Society, make it impossible to trace the funds of the individuals who purport to be ministers. If full time ministers pay five cents for the books, the so-called companies certainly pay no more.

The mere fact that the petitioners and their co-religionists profess to be ministers furnishes no protection to the homes they invade. A glance at the record in this case shows that any one can become a minister if he has either the price or the credit to obtain a few books. Willard Mowder had no occupation at all. His home was in Virginville, West Virginia. He did not profess to be a minister. He testified—

"My main reason was that I wanted to get in some kind of work that I learned that Jehovah at sometime or another would make this world a different world, and I like this kind of work very much. That is my reason for coming." (97a)

The only requisite for becoming a minister is the so-called exhibition or sale of publications from house to house (66a).

The identification cards are also obtained with the purchase of books (93a). J. O. Rutherford, the President of the Watch Tower Bible & Tract Society, whose name appears on the card, has no responsibility to the people of Jeannette. Neither does he have any responsibility for the people who carry the card. If individuals, in the name of the exercise of religious freedom, can set themselves up in the place and stead of responsible elected Officials, then a serious blow has been dealt both State and Federal Governments.

In their brief, the petitioners take the position that the payment of the fee established by the ordinance would forbid or operate as a substantial clog on their activities.

The reasonableness of the fee was not questioned in the Mayor's Court or any of the Courts of Pennsylvania. It is raised here the first time. The record repels any notion that the fee of \$1.50 per day, or \$7.00 a week, prescribed by the ordinance, would be in any manner burdensome. If the Watch Tower Bible & Tract Society can publish its books and sell them to ministers or to its companies at five cents apiece, and the public, in turn, pays a quarter, then certainly the companies and the ministers can make allowance for the payment of the city's fee just as they make allowance for the purchase and use of automobiles, busses, and other instrumentalities used in their work.

2 The necessity of paying the fee might and undoubtedly would operate to compel Jehovah's Witnesses to reduce their force to the number reasonably necessary to canvass a community. On the day the petitioners were arrested, there were one hundred four solicitors in the City of Jeannette (191a). On a prior occasion, about one year earlier, there were well over a hundred solicitors. This was done in fulfillment of the defiant threat made by Mr. Hessler, zone manager for Jehovah's Witnesses, to come back and "be back with more than the Jeannette police can handle." (See record of case of *Douglas et al. v. City of Jeannette*, at No. 450 October Term 1942, pages 129 to 132).

This constituted pure defiance on the part of Jehovah's Witnesses. It followed an insistence by the Mayor that the rights of Jehovah's Witnesses be determined by the Courts. It was done out of a malicious desire to annoy the citizens and to embarrass the local authorities, and to force a withdrawal of the proceedings then pending before the Courts. The constitutional right of religious freedom certainly does not go this far.

Individuals selling small articles, ordinarily canvass

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the entire town within a period of one to two weeks. Groups of six to eight do the job in a day. Jehovah's Witnesses, if they were actually desirous of carrying God's word, as they see it, into the homes of the city through the sale of their books, could register with the city clerk, pay the small daily or weekly fee, and be well remunerated from a monetary point of view.

The respondents see no occasion in this case for defining either religion or religious activity, but do wish to observe that if the definition contended for by the petitioners were accepted, it would permit them to do anything they pleased in the name of religion, and they, and they alone, would be the judges of what laws they would obey and what laws they would disregard. (The defense in the Mayor's Court was, in substance, that Jehovah law and commandments were supreme and that their consciences forbade them to apply for a license. 17a, 75a, 88a).

None of the rights guaranteed by the Constitution are absolute. That freedom of speech and freedom of religion have their limitations along with other rights was recognized by this Court in *Shaplinsky v. City of New Hampshire* (New Hampshire 1942), 62 S. Ct. 766, 315 U. S. 568, 86 L. Ed. 1031; *Hotel and Restaurant Employees International Alliance, Local No. 122 vs. Wisconsin Employment Relations Board* (1942), 62 S. Ct. 706, 316 U. S. 437, 86 L. Ed. 946.

Even the right to use the streets and public parks for communication of views on national questions was held to be relative in the case of *Hague v. Committee for Industrial Organization* (N. J. 1939), 59 Super. Ct. 954, 37 U. S. 496, 83 L. Ed. 1423. It was there said that these rights must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order.

Argument.

In the case of *Schneider v. Town of Irvington*, 60 S. Ct. 146, 308 U. S. 147, 84 L. Ed. 155 this Court used the following highly significant language:

"In every case, therefore, where legislative abridgment of the right is asserted, the courts would be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights."

The constitutional right of the citizens of Jeannette to be protected in their homes, their right of privacy, and their right to enjoy their homes, demands that Ordinance No. 60 of the City of Jeannette be upheld as a constitutional exercise of the sovereign right of the state to tax, and as an exercise of the sovereign duty of the state to protect its citizens from unrestrained intrusion into their homes.

President Judge Keller, of the Superior Court of Pennsylvania, who wrote the opinion of the Superior Court in this case, also wrote the opinion of that Court in the case of *Commonwealth v. Palmes*, 158 A. (2d) 481, 141 Pa. Super. Ct. 430. It so aptly expresses the views of the respondents that counsel takes the liberty of using it in conclusion:

"To phrase it another way, while freedom of religious belief is a constitutional right, freedom in the mode of expressing that belief is not a constitutional right." (Atl. Reporter, 484).

Argument

We have here involved not only more noisy and disturbing disorderly conduct than was present in those cases, but we have an additional element not present in them, viz., the violation by the appellant and his associates of a constitutional right much older than, and just as fundamental as, the right of freedom of conscience or the right of freedom of speech—the right to be secure in one's home from unwanted intrusion. Mr. Justice Murphy had it in mind when in his recent opinion in *Thornhill v. State of Alabama*, 310 U. S. 88, 60 S. Ct. 736, 84 L. —, and *Carlson v. People of California*, 310 U. S. 106, 60 S. Ct. 746, 84 L. Ed. —, decided April 22, 1940, he recognized the power and duty of the state to take steps to preserve the peace and *protect the privacy* and the property of its inhabitants. Centuries before freedom of conscience and freedom of speech were established in England it was the proud boast of an Englishman that his home was his castle and that as long as he obeyed the law, the King and his army could not enter it against his will. That right is implied in both our Federal and State Constitutions in the provisions against *unreasonable search and seizure* even by law officers. Const. U. S. Const. Amend. 4; PS Const. art 1 Sec. 8. We had it in mind when we said in *Pittsburgh v. Ruffner*, 134 Pa. Super. 192, 199, 4 A. 2d 224, 227: This appellant is perfectly free to worship God according to the dictates of his own conscience, separately or with his family and co-religionists, in his home or theirs, and in church, chapel, assembly or other gathering place. But the very clause of the Constitution which protects him in his religious worship, protects others from having *his* religious tenets and beliefs thrust upon *them*, *against their will, in their homes* and offices. Nor does the right of free speech justify the

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unwanted intrusion of the speaker into the homes of others to give voice to his speech. There is a reasonable limit to the right, and it ends at the door of a home whose residents do not want the speaker to enter; just as its protection is lost by blasphemy, disorderly conduct, libel, slander, etc."

Respectfully submitted,

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